17-102

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 123.

THE MICHIGAN CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

PARIS MYRICK, FOR THE USE OF THE COMMERCIAL NATIONAL BANK OF CHICAGO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 23, 1879.

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the judges thereof, on Friday, the second day of May, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and third.

WILLIAM H. BRADLEY, *Clerk.*

PARIS MYRICK, FOR THE USE OF THE COMMERCIAL NATIONAL BANK OF CHICAGO,
v.
THE MICHIGAN CENTRAL RAILROAD COMPANY. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *set:*

Be it remembered that on the twenty-first day of February, A. D. 1878, came the said plaintiff, Paris Myrick, for the use of The Commercial National Bank of Chicago, by Messrs. Larned, Ryerson and Larned, his attorneys, and filed in the office of the clerk of the circuit court of
2 the United States for the northern district of Illinois, at Chicago, in the district aforesaid, his bond for costs and præcipe for a writ of summons against said defendant in said entitled cause, which said bond for costs and præcipe are respectively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, March term, A. D. 1878.

PARIS MYRICK, FOR USE OF COMMERCIAL NATIONAL BANK OF CHICAGO,
v.
THE MICHIGAN CENTRAL RAILROAD COMPANY.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and, in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated this 21st day of February, A. D. 1878.

LARNED, RYERSON AND LARNED.

(Endorsed:) Filed Feb'y 21st, A. D. 1878. Wm. H. Bradley, clerk.

952——1

3 *Præcipe.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the United States, to the March term, A. D. 1878.

PARIS MYRICK, FOR THE USE OF THE COMMERCIAL NATIONAL BANK OF CHICAGO, plaintiff, v. THE MICHIGAN CENTRAL RAILROAD COMPANY, defendant.	Assumpsit. Damages, $30,000.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case on promises to the damage of said plaintiff in the sum of thirty thousand dollars, direct the same to the marshal of said district to execute, and make it returnable to the March term of said court, A. D. 1878.

LARNED, RYERSON AND LARNED,
Plaintiff's Attorneys.

To W. H. BRADLEY, Esq., *Clerk.*

CHICAGO, *Feb.* 21*st*, 1878.

(Endorsed:) Filed Feb'y 21st, A. D. 1878. Wm. H. Bradley, clerk.

4 And on the same day, to wit, the 21st day of February, A. D. 1878, a writ of summons issued out of said clerk's office in said entitled cause, which said writ, with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Writ of summons.

Circuit court of the United States of America, northern district of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon The Michigan Central Railroad Company, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of March next, to answer unto Paris Myrick, for use of The Commercial National Bank of Chicago, of a plea of trespass on the case upon promises to its damage, as it alleges, of thirty thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 21st
5 day of February, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the 102d year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

I have served the within writ personally upon the within-named Michigan Central Railroad Company by personally delivering a true copy thereof to J. A. Grier, general freight agent of said road—I was not able to find the president of said road—on the 22d day of February, A. D. 1878.

J. S. HILDRUP,
U. S. Marshal,
By D. D. SABIN,
Deputy.

(Endorsed:) Filed M'ch 2d, A. D. 1878. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 22d day of February, A. D. 1878, said plaintiff, by his attorneys, filed in said clerk's office his declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

Circuit court of the United States for the seventh circuit and northern district of Illinois, of the March term, A. D. 1878.

UNITED STATES OF AMERICA,
Northern District of Illionis, ss:

6 Paris Myrick, who is a citizen and resident of the State of Illinois, who sues for the use of The Commercial National Bank of Chicago, plaintiff in this suit, by Larned, Ryerson and Larned, his attorneys, complains of The Michigan Central Railroad Company, a corporation created by the legislature of the State of Michigan, who is a citizen of the State of Michigan, defendant, who has been duly summoned in a plea of trespass on the case on promises:

For that whereas the said defendant, before and at the time of the making of his said promise and undertaking next hereinafter mentioned, was a common carrier of goods and chattels for hire on and by certain cars and railway from the city of Chicago, in the State of Illinois, to the city of Philadelphia, in the State of Pennsylvania, to wit, at said northern district of Illinois; and the said defendant being such carrier as aforesaid, the said plaintiff heretofore, to wit, on the seventh day of November, in the year of our Lord one thousand eight hundred and seventy-seven, at Chicago, to wit, at said northern district of Illinois, at the special instance and request of the said defendant, caused to be delivered to the said defendant, so being

7 such carrier as aforesaid, certain goods and chattels of the plaintiff, to wit, two hundred and two live cattle, of the kind and description known as beef cattle, weighing two hundred and forty thousand pounds, of the said plaintiff of great value, to wit, thirty thousand dollars, lawful money of the United States, to be taken care of and safely and securely carried and conveyed by the said defendant, as such carrier as aforesaid, on and by the said cars and railway, from Chicago aforesaid to Philadelphia aforesaid, and there, to wit, at Philadelphia aforesaid, to be safely and securely delivered by the said defendant to the said plaintiff, or to his order, and in consideration thereof and of certain reward to the said defendant in

that behalf, the said defendant being such carrier as aforesaid, then and there, to wit, at the day and year aforesaid, at said Chicago aforesaid, to wit, at said district, undertook and faithfully promised the said plaintiff to take care of the said goods and chattels and live stock, and safely and securely to carry and convey the same on and by the said cars and railway from said Chicago to said Philadelphia, and there, to wit, at Philadelphia aforesaid, safely and securely to deliver the same to the said plaintiff, or to his order.

8 And although the said defendant, as such carrier as aforesaid, then and there had and received the said goods and chattels and live stock for the purpose aforesaid, yet the said defendant, not regarding its duty as such carrier nor its said promise and undertaking so made as aforesaid, hath not taken care of the said goods and chattels and live stock or safely or securely carried or conveyed the same from Chicago aforesaid to Philadelphia aforesaid, nor hath there, to wit, at Philadelphia aforesaid, safely or securely delivered the same to the said plaintiff, or to his order, to wit, at said northern district of Illinois, but, on the contrary thereof, the said defendant, being such carrier as aforesaid, so carelessly and negligently behaved and conducted itself with respect to the goods and chattels and live stock aforesaid that by and through the mere carelessness, negligence, and improper conduct of the said defendant and its servants in this behalf the said goods and chattels and live stock, being of the value aforesaid, afterwards, to wit, on the day and year aforesaid, at Philadelphia aforesaid, to wit, at said northern district of Illinois, became and were wholly lost to the said plaintiff.

9 Also, for that whereas the defendant, before and at the time of the making of its promise hereinafter next mentioned, was a common carrier of goods and chattels for hire in and by certain cars and railway from Chicago, in the State of Illinois, to Philadelphia, in the State of Pennsylvania, to wit, at said northern district of Illinois, and the defendant being such carrier as aforesaid, the plaintiff, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and seventy-seven, at Chicago, to wit, at said northern district of Illinois, at the request of the defendant, caused to be delivered to the said defendant, so being such carrier as aforesaid, certain goods and chattels of the plaintiff, to wit, two hundred and two live cattle, of the kind and description known as beef cattle, weighing two hundred and sixty thousand pounds, of the value of thirty thousand dollars, to be taken care of and safely carried by the defendant, as such carrier as aforesaid, in and by said cars and railway, from Chicago aforesaid to Philadelphia aforesaid, and at the last-named place, to wit, at Philadelphia aforesaid, to be safely delivered by the defendant to the plaintiff, or to his order, and in consideration thereof, and of certain reward to the defendant in that behalf, the said defendant, being such carrier as aforesaid, then and there,

10 to wit, on the day and year aforesaid, to wit, at said district, promised the plaintiff to take care of the said goods and chattels and safely to carry the same in and by the said cars and railway from Chicago aforesaid to Philadelphia aforesaid, and at the last-named place safely to deliver the same to the plaintiff or to his order; and although the defendant, as such carrier as aforesaid, then received the said goods and chattels and live stock at the place first aforesaid, for the purpose aforesaid, yet the said de-

fendant, not regarding its duty as such carrier nor its said promise so made as aforesaid, has not taken care of the said goods and chattels and live stock, or safely carried and delivered the same from Chicago aforesaid to Philadelphia aforesaid, nor has at the last-mentioned place safely delivered the same to the plaintiff or his order, to wit, at said northern district of Illinois, but on the contrary thereof, the defendant, being such carrier as aforesaid, so carelessly behaved itself with respect to the goods and chattels and live stock aforesaid that by and through the mere negligence and improper conduct of the said defendant, and its servants in this behalf the said goods and chattels and live stock, being of the value aforesaid, afterwards,
11 to wit, on the day and year aforesaid, at Philadelphia aforesaid, to wit, at said northern district of Illinois, became and were wholly lost to the plaintiff.

THIRD COUNT.—Also, for that whereas the said defendant, before and at the time of the making of its promise hereinafter next mentioned, was a common carrier of goods and chattels for hire in and by certain cars and railway from Chicago, in the State of Illinois, to Philadelphia, in the State of Pennsylvania, to wit, at said northern district of Illinois, and the defendant being such carrier as aforesaid, the complainant, on the 7th day November, in the year of our Lord one thousand eight hundred and seventy-seven, at Chicago, to wit, at said northern district of Illinois, at the request of the defendant, caused to be delivered to said defendant, so being such carrier as aforesaid, certain goods, chattels, and live stock of complainant, to wit, two hundred and two cattle, of the kind and description known as beef cattle, weighing two hundred and forty thousand pounds, of the value of thirty thousand dollars, to be taken care of and safely carried by the said defendant, as such carrier as aforesaid, in and by said cars and railway, from Chicago aforesaid, to Philadelphia aforesaid, and at the
12 last-named place, to wit, at Philadelphia aforesaid, to be safely delivered by the defendant to the plaintiff aforesaid or his order.

And in consideration thereof, and of certain reward to it in that behalf, the said defendant, being such carrier as aforesaid, then and there, to wit, on the day and year aforesaid, at Chicago aforesaid, to wit, at said northern district, promised the plaintiff to take care of the said goods, chattels, and live stock, and safely to carry the same in and by the said cars and railway from Chicago aforesaid to Philadelphia aforesaid, and at the last-named place safely to deliver the same to the plaintiff, or his order; in consideration of a large sum of money, to wit, fifteen thousand dollars, then and there advanced and paid by The Commercial National Bank of Chicago, and he, the said plaintiff, at the time last aforesaid, then and there ordered the said goods, chattels, and live stock to be delivered to the Commercial National Bank at Chicago, at Philadelphia aforesaid, to wit, at said northern district of Illinois, of all which said defendant had notice, and although the defendant had notice, and although the defendant, as such carrier as aforesaid, then and there received the said goods, chattels, and live stock at the place first aforesaid, and for the purpose aforesaid, yet the said defendant, not regarding its duty as such carrier nor its said
13 promise so made as aforesaid, has not taken care of the said goods, chattels, and live stock, or safely carried and delivered the same from Chicago aforesaid to Philadelphia aforesaid, nor has at the last-mentioned place safely delivered the same to the said Commercial National

Bank, as ordered by said plaintiff as aforesaid. But, on the contrary thereof, said defendant, being such carrier as aforesaid, so carelessly behaved itself with respect to said goods, chattels, and live stock as aforesaid, that by and through the mere neglect and improper conduct of said defendant and its servants in this behalf the said goods, chattels, and live stock, being of the value aforesaid, afterwards, to wit, on the day and year aforesaid, at Philadelphia aforesaid, to wit, at said northern district of Illinois, became and were wholly lost to the plaintiff.

Also, for that whereas the defendant, before and at the time of the making of its promise hereinafter next mentioned, was a common carrier of goods and chattels for hire in and by certain cars and railway from Chicago, in the State of Illinois, to Philadelphia, in the State of Pennsylvania, and the defendant being such carrier as aforesaid, the plaintiff, on the fourteenth day of November, in the year of our Lord one thousand eight hun-
14 dred and seventy-seven, at Chicago, to wit, at said northern district of Illinois, at the request of the defendant, caused to be delivered to the said defendant, so being such carrier as aforesaid, certain goods, chattels, and live stock of the plaintiff, to wit, two hundred and two live cattle, of the kind and description known as beef cattle, weighing two hundred and sixty thousand pounds, of the value of thirty thousand dollars, to be taken care of and safely carried by the defendant as such carrier as aforesaid, in and by said cars and railway, from Chicago aforesaid, and, to wit, at Philadelphia aforesaid to be safely delivered by the defendant to the plaintiff or his order. And in consideration thereof and of certain reward to the defendant in that behalf the said defendant, being such carrier as aforesaid, then and there, to wit, on the day and year aforesaid, at Chicago, aforesaid, to wit, at said northern district, promised the plaintiff to take care of the said goods, chattels, and live stock, and safely to carry the same, in and by the said cars and railway, from Chicago aforesaid to Philadelphia aforesaid, and at the last-named place safely to deliver the same to the plaintiff or his order, and in consideration of a large sum of
15 money, to wit, fifteen thousand dollars, then and there advanced and paid by The Commercial National Bank of Chicago to the said plaintiff at the date last aforesaid, then and there ordered the said defendant to deliver the said goods and chattels to The Commercial National Bank of Chicago, at Philadelphia aforesaid, to wit, at said northern district of Illinois, of all of which the said defendant had notice.

And although the defendant, as such carrier, as aforesaid then and there received the said goods and chattels and live stock at the place first aforesaid, for the purpose aforesaid, yet the said defendant, not regarding its duty as such carrier nor its said promise so made as aforesaid, has not taken care of the said goods and chattels and live stock, or safely carried and delivered the same from Chicago aforesaid to Philadelphia aforesaid, nor has at the last mentioned place safely delivered the same to the said Commercial National Bank of Chicago, as ordered by the said plaintiff as aforesaid but, on the contrary thereof, the defendant being such carrier, as aforesaid, so carelessly behaved itself with respect to the said goods and chattels and live stock as aforesaid, that by and through the mere negligence and improper conduct of the said defendant and its servants in this behalf the said goods
16 and chattels and live stock, being of the value aforesaid, afterwards, to wit, on the day and year aforesaid, at Philadelphia aforesaid, to

wit, at said northern district of Illinois, became and were wholly lost to the plaintiff.

FIFTH COUNT.—Also for that whereas the said defendant, before or at the time of the making of its promise hereinafter next mentioned, was a common carrier of goods and chattels for hire in and by certain cars and railway from Chicago, in the State of Illinois, to Detroit, in the State of Michigan, to wit, at said northern district of Illinois, and the defendant being such carrier as aforesaid, the complainant, on the 7th day of November, in the year of our Lord 1877, at Chicago, to wit, at said northern district of Illinois, at the request of the defendant, caused to be delivered to said defendant, so being such carrier as aforesaid, certain goods, chattels, and live stock of the complainant, to wit, two hundred and two cattle, of the kind and description known as beef cattle, weighing two hundred and forty thousand pounds, of the value of thirty thousand dollars, to be taken care of and safely carried by the said defendant, as such carrier as aforesaid, from Chicago aforesaid to Philadelphia aforesaid, and at the last-named
17 place, to wit, at Philadelphia aforesaid, to be safely delivered by the defendant to the plaintiff aforesaid, or his order.

And in consideration thereof and of certain reward to it in that behalf, the said defendant, being such carrier, then and there, to wit, on the day and year aforesaid, at Chicago aforesaid, to wit, at such northern district, promised the plaintiff to take care of the said goods, chattels, and live stock and safely to carry the same in and by the said cars and railway from Chicago aforesaid to Philadelphia aforesaid, at the last-named place safely to deliver the same to the plaintiff or his order, and in consideration of a large sum of money, to wit, fifteen thousand dollars, then and there advanced and paid by The Commercial National Bank of Chicago to the said plaintiff at the time last aforesaid then and there ordered the said goods and chattels to be delivered to The Commercial National Bank of Chicago at Philadelphia aforesaid, to wit, at said northern district of Illinois, of all which said defendant had notice. And although the defendant, as such carrier aforesaid, then and there received the said goods, chattels, and live stock at the place first aforesaid, for the purpose aforesaid, yet the said defendant, not regarding its duty as such carrier nor its promise so
18 made as aforesaid, has not taken care of the said goods, chattels, and live stock, or safely carried and delivered the same from Chicago aforesaid to Philadelphia aforesaid, nor has, at the last-mentioned place, safely delivered the same to The Commercial National Bank of Chicago, as ordered by said plaintiff, as aforesaid; but, on the contrary thereof, said defendant, being such carrier as aforesaid, so carelessly behaved itself with respect to said goods, chattels, and live stock aforesaid, that by and through the mere neglect and improper conduct of said defendant and its servants in this behalf, the said goods, chattels, and live stock, of the value aforesaid, afterwards, to wit, on the day and year aforesaid, at Philadelphia aforesaid to wit, at said northern district of Illinois, became and were wholly lost to the plaintiff.

SIXTH COUNT.—Also, for that whereas the defendant, before and at the time of the making of the promise hereinafter next mentioned, was a common carrier of goods and chattels for hire in and by certain cars and railway from Chicago, in the State of Illinois, to Detroit, in the State of Michgan, to wit, at said northern district of Illinois, and the defendant being

such carrier as aforesaid, the plaintiff, on the 14th day of November,
19 in the year of our Lord one thousand eight hundred and seventy-seven, at Chicago, to wit, at said northern district of Illinois, at the request of the defendant, caused to be delivered to the said defendant, so being such carrier as aforesaid, certain goods, chattels, and live stock of the plaintiff, to wit, two hundred and two live cattle, of the kind and description known as beef cattle, weighing two hundred and sixty thousand pounds, of the value of thirty thousand dollars, to be taken care of and safely carried by the defendant as such carrier as aforesaid, in and by said cars and railway, from Chicago aforesaid to Philadelphia aforesaid, and at the last-named place, to wit, at Philadelphia aforesaid, to be safely delivered by the defendant to the plaintiff, or his order; and in consideration thereof, and of certain reward to the defendant in that behalf, the said defendant, being such carrier as aforesaid, then and there, to wit, on the day and year aforesaid, at Chicago aforesaid, to wit, at said northern district, promised the plaintiff to take care of the said goods, chattels, and live stock, and safely to carry the same in and by the said cars and railway from Chicago aforesaid to Philadelphia aforesaid, and at the last-named place safely to deliver the same to the plaintiff or his order; and the said plaintiff, in consideration of a large sum of money, to wit, fifteen thousand dollars,
20 then and there advanced and paid to the said plaintiff by The Commercial Bank of Chicago, at the date last aforesaid, then and there ordered the said goods and chattels to be delivered to The Commercial National Bank of Chicago, at Philadelphia aforesaid, to wit, at said northern district of Illinois, of all of which the said defendant had notice. And although the defendant, as such carrier as aforesaid, then and there received the said goods and chattels and live stock at the place first aforesaid, for the purpose aforesaid, yet the said defendant, not regarding its duty as such carrier, nor its said promise so made as aforesaid, has not taken care of the said goods and chattels and live stock, or safely carried and delivered the same from Chicago aforesaid to Philadelphia aforesaid, nor has at the last-mentioned place safely delivered the same to the said Commercial National Bank of Chicago, being as ordered by the said plaintiff as aforesaid; but on the contrary thereof, the defendant, such carrier as aforesaid, so carelessly behaved itself with respect to the said goods, chattels, and live stock as aforesaid that by and through the mere negligence and improper conduct of the said defendant and its servants in this behalf the said goods and chattels and live stock, being of the value aforesaid, afterwards, to wit,
21 on the day and year aforesaid, at Philadelphia aforesaid, to wit, at said northern district of Illinois, became and were wholly lost to the plaintiff.

SEVENTH COUNT.—And also, for that whereas the said defendant, before and at the time of making its promise and undertaking hereinafter next mentioned, was a common carrier of goods and chattels for hire in and by certain cars and railway from a certain place, to wit, from Chicago, in the State of Illinois, to a certain other place, to wit, to Philadelphia, in the State of Pennsylvania, to wit, at said northern district of Illinois and the said defendant, being such carrier as aforesaid, the said plaintiff heretofore, to wit, on the seventh day of November, A. D. 1877, at Chicago, to wit, at the northern district of Illinois, at the special instance and request of the said defendant, caused to be delivered to the said defendant as being

such carrier as aforesaid, at Chicago, to wit, at the northern district of Illinois, certain goods and chattels, to wit, two hundred and two live cattle, known as beef cattle, and of the weight of two hundred and forty thousand pounds, of the said plaintiff, of great value, to wit, of the value of thirty thousand dollars lawful money of the United States, to be taken care of and safely and securely carried and conveyed by the said defendant as such carrier as aforesaid, in and by the said cars and railway aforesaid,
22 to Philadelphia aforesaid, and then and there, to wit, at Philadelphia aforesaid, to be safely and securely delivered by the said defendant for the said plaintiff.

And in consideration thereof and of certain reward to the said defendant in that behalf, the said defendant, as such carrier as aforesaid, then and there, on the day and year aforesaid, at Chicago aforesaid, to wit, at said northern district of Illinois, undertook and faithfully promised the said plaintiff to take care of the said goods, chattels, and live stock, and safely and securely to carry and convey the same in the said cars and railway from Chicago aforesaid to Philadelphia aforesaid, and there, to wit, at Philadelphia aforesaid, safely and securely to deliver the same for the said plaintiff.

And thereupon, to wit, at the time and place aforesaid, the said defendant executed and delivered to the said plaintiff a certain contract in writing, known as a receipt or bill of lading, for the said goods, signed by the said defendant, which was in substance as follows:

"MICHIGAN CENTRAL RAILROAD COMPANY,
"*Chicago Station, November 7th*, 1877.

"Received from Paris Myrick in apparent good order, consigned to order of Paris Myrick (notify J. and W. Blaker), Philadelphia, Pa., two hundred and two (202) cattle, weight 240,000, (meaning two hundred
23 and forty thousand pounds), advance charges twelve dollars, marked and described as above, (contents and value otherwise unknown,) for transportation by the Michigan Central Railroad Company.

(Signed) "WILLIAM GRAGAN,
"B. *Agent.*"

In and by which said contract the said defendant promised and agreed to deliver the said two hundred and two cattle to the said Paris Myrick, or to his order, at Philadelphia aforesaid. And afterwards, to wit, on the day and year aforesaid, at said Chicago, to wit, in said northern district of Illinois, the said Paris Myrick, by writing under his hand, in consideration of a large sum of money, to wit, the sum of fifteen thousand dollars, advanced and paid by The Commercial National Bank of Chicago to said Paris Myrick, endorsed and delivered the said receipt or bill of lading to The Commercial National Bank of said Chicago, and thereby ordered the said defendant to deliver the said cattle therein described to the said Commercial National Bank at Philadelphia aforesaid, of all which said defendant then and there had notice.

And although the said defendant, as such carrier as aforesaid, then and there had and received the said goods, chattels, and live stock for
24 the purpose aforesaid, yet the said defendant, not regarding its duty as such carrier nor its said promise and undertakings so made as

such carrier as aforesaid, the plaintiff, on the 14th day of November,
19 in the year of our Lord one thousand eight hundred and seventy-seven, at Chicago, to wit, at said northern district of Illinois, at the request of the defendant, caused to be delivered to the said defendant, so being such carrier as aforesaid, certain goods, chattels, and live stock of the plaintiff, to wit, two hundred and two live cattle, of the kind and description known as beef cattle, weighing two hundred and sixty thousand pounds, of the value of thirty thousand dollars, to be taken care of and safely carried by the defendant as such carrier as aforesaid, in and by said cars and railway, from Chicago aforesaid to Philadelphia aforesaid, and at the last-named place, to wit, at Philadelphia aforesaid, to be safely delivered by the defendant to the plaintiff, or his order; and in consideration thereof, and of certain reward to the defendant in that behalf, the said defendant, being such carrier as aforesaid, then and there, to wit, on the day and year aforesaid, at Chicago aforesaid, to wit, at said northern district, promised the plaintiff to take care of the said goods, chattels, and live stock, and safely to carry the same in and by the said cars and railway from Chicago aforesaid to Philadelphia aforesaid, and at the last-named place safely to deliver the same to the plaintiff or his order; and the said plaintiff, in consideration of a large sum of money, to wit, fifteen thousand dollars,
20 then and there advanced and paid to the said plaintiff by The Commercial Bank of Chicago, at the date last aforesaid, then and there ordered the said goods and chattels to be delivered to The Commercial National Bank of Chicago, at Philadelphia aforesaid, to wit, at said northern district of Illinois, of all of which the said defendant had notice. And although the defendant, as such carrier as aforesaid, then and there received the said goods and chattels and live stock at the place first aforesaid, for the purpose aforesaid, yet the said defendant, not regarding its duty as such carrier, nor its said promise so made as aforesaid, has not taken care of the said goods and chattels and live stock, or safely carried and delivered the same from Chicago aforesaid to Philadelphia aforesaid, nor has at the last-mentioned place safely delivered the same to the said Commercial National Bank of Chicago, being as ordered by the said plaintiff as aforesaid; but on the contrary thereof, the defendant, such carrier as aforesaid, so carelessly behaved itself with respect to the said goods, chattels, and live stock as aforesaid that by and through the mere negligence and improper conduct of the said defendant and its servants in this behalf the said goods and chattels and live stock, being of the value aforesaid, afterwards, to wit,
21 on the day and year aforesaid, at Philadelphia aforesaid, to wit, at said northern district of Illinois, became and were wholly lost to the plaintiff.

SEVENTH COUNT.—And also, for that whereas the said defendant, before and at the time of making its promise and undertaking hereinafter next mentioned, was a common carrier of goods and chattels for hire in and by certain cars and railway from a certain place, to wit, from Chicago, in the State of Illinois, to a certain other place, to wit, to Philadelphia, in the State of Pennsylvania, to wit, at said northern district of Illinois and the said defendant, being such carrier as aforesaid, the said plaintiff heretofore, to wit, on the seventh day of November, A. D. 1877, at Chicago, to wit, at the northern district of Illinois, at the special instance and request of the said defendant, caused to be delivered to the said defendant as being

such carrier as aforesaid, at Chicago, to wit, at the northern district of Illinois, certain goods and chattels, to wit, two hundred and two live cattle, known as beef cattle, and of the weight of two hundred and forty thousand pounds, of the said plaintiff, of great value, to wit, of the value of thirty thousand dollars lawful money of the United States, to be taken care of and safely and securely carried and conveyed by the said defendant as such carrier as aforesaid, in and by the said cars and railway aforesaid,
22 to Philadelphia aforesaid, and then and there, to wit, at Philadelphia aforesaid, to be safely and securely delivered by the said defendant for the said plaintiff.

And in consideration thereof and of certain reward to the said defendant in that behalf, the said defendant, as such carrier as aforesaid, then and there, on the day and year aforesaid, at Chicago aforesaid, to wit, at said northern district of Illinois, undertook and faithfully promised the said plaintiff to take care of the said goods, chattels, and live stock, and safely and securely to carry and convey the same in the said cars and railway from Chicago aforesaid to Philadelphia aforesaid, and there, to wit, at Philadelphia aforesaid, safely and securely to deliver the same for the said plaintiff.

And thereupon, to wit, at the time and place aforesaid, the said defendant executed and delivered to the said plaintiff a certain contract in writing, known as a receipt or bill of lading, for the said goods, signed by the said defendant, which was in substance as follows:

"MICHIGAN CENTRAL RAILROAD COMPANY,
"*Chicago Station, November 7th*, 1877.

"Received from Paris Myrick in apparent good order, consigned to order of Paris Myrick (notify J. and W. Blaker), Philadelphia, Pa., two hundred and two (202) cattle, weight 240,000, (meaning two hundred
23 and forty thousand pounds), advance charges twelve dollars, marked and described as above, (contents and value otherwise unknown,) for transportation by the Michigan Central Railroad Company.

(Signed) "WILLIAM GRAGAN,
"B. , *Agent.*"

In and by which said contract the said defendant promised and agreed to deliver the said two hundred and two cattle to the said Paris Myrick, or to his order, at Philadelphia aforesaid. And afterwards, to wit, on the day and year aforesaid, at said Chicago, to wit, in said northern district of Illinois, the said Paris Myrick, by writing under his hand, in consideration of a large sum of money, to wit, the sum of fifteen thousand dollars, advanced and paid by The Commercial National Bank of Chicago to said Paris Myrick, endorsed and delivered the said receipt or bill of lading to The Commercial National Bank of said Chicago, and thereby ordered the said defendant to deliver the said cattle therein described to the said Commercial National Bank at Philadelphia aforesaid, of all which said defendant then and there had notice.

And although the said defendant, as such carrier as aforesaid, then and there had and received the said goods, chattels, and live stock for
24 the purpose aforesaid, yet the said defendant, not regarding its duty as such carrier nor its said promise and undertakings so made as

aforesaid, hath not taken care of the said goods, chattels, and live stock, or safely or securely carried or conveyed the same from Chicago aforesaid to Philadelphia aforesaid, and delivered the same for the said plaintiff to the said Commercial National Bank at Philadelphia aforesaid; but, on the contrary thereof, the said defendant, as such carrier as aforesaid, so carelessly and negligently behaved and conducted itself, and with respect to the said goods, chattels, and live stock aforesaid, that by and through the mere carelessness, negligence, and improper conduct of the said defendant and its servants in this behalf, the said goods, chattels, and live stock being of the value aforesaid, afterwards, to wit, on the day and year aforesaid, at Chicago aforesaid, to wit, at said northern district of Illinois, became and was wholly lost to the said plaintiff.

EIGHTH COUNT.—And for that whereas the said defendant, before and at the time of the making of its promises hereinafter next mentioned, was a common carrier of goods and chattels for hire in and by certain cars and railroad from Chicago, in the State of Illinois, to Philadelphia, in
25 the State of Pennsylvania, to wit, at said northern district of Illinois, and the defendant being such carrier as aforesaid, the said plaintiff at Chicago aforesaid, to wit, at said northern district of Illinois, at the special instance and request of said defendant, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and seventy-seven, caused to be delivered to the said defendant, so being such carrier as aforesaid, at Chicago, to wit, in said northern district of Illinois, certain goods, chattels, and live stock of the said plaintiff, to wit, two hundred and two cattle, of the description known as beef cattle, weighing two hundred and sixty thousand pounds, of the value of thirty thousand dollars, to be taken care of and safely carried by the said defendant, as such carrier as aforesaid, in and by the said railroad, from Chicago aforesaid to Philadelphia aforesaid, and at the last-named place, to wit, at said northern district of Illinois, to be safely delivered by said defendant for the plaintiff.

And in consideration thereof, and of certain reward in that behalf, it, the said defendant, on the day aforesaid, at said northern district of Illinois, promised the said plaintiff to take care of said goods, chattels,
26 and live stock, and faithfully to carry the same in and by said cars and railroad from Chicago aforesaid to Philadelphia aforesaid, and at the last-named place safely to deliver the same for the plaintiff; and thereupon, to wit, at the time and place aforesaid, the said defendant executed and delivered to the said plaintiff a certain contract in writing, known as a receipt or bill of lading for the said goods, signed by the said defendant, which was in substance as follows, to wit:

"MICHIGAN CENTRAL RAILROAD COMPANY,
"*Chicago Station, November 14th*, 1877.

"Received from Paris Myrick, in apparent good order, consigned to the order of Paris Myrick (notify J. and W. Blaker), Philadelphia, Pa., 202 cattle, weight 260,000 (meaning 260,000 pounds), advance charges thirteen dollars, marked and described as above, contents and value otherwise unknown, for transportation by the Michigan Central Railroad Company.

(Signed) "WILLIAM GEAGAN,
"B. *Agent.*"

In and by which contract the said defendant promised and agreed to deliver the said two hundred and two cattle to said Paris Myrick, or to his order, at Philadelphia. And afterwards, to wit, on the day and year aforesaid, at said Chicago, to wit, at said northern district of Illinois,
27 the said Paris Myrick, in consideration of a large sum of money, to wit, fifteen thousand dollars, then and there advanced and paid to said plaintiff by The Commercial National Bank of Chicago, by writing under his hand, endorsed and delivered the said receipt or bill of lading to The Commercial National Bank of said Chicago, and thereby ordered the said defendant to deliver the said cattle therein described to the said Commercial National Bank at Philadelphia, of all which said defendant then and there had notice. And although the said defendant, as such receiver as aforesaid, then and there had and received the said goods, chattels, and live stock at the place first aforesaid, for the purpose aforesaid, yet, not regarding its duty as such carrier nor its said promise so made as aforesaid, hath not taken care of the said goods, chattels, and live stock, or safely or securely carried or conveyed the same from Chicago aforesaid to Philadelphia aforesaid, and delivered the same for the said plaintiff to the said Commercial National Bank at Philadelphia aforesaid; but, on the contrary thereof, said defendant, being such carrier as aforesaid, so carelessly and negligently behaved and conducted itself, and with respect to said goods, chattels, and live stock aforesaid, that by and through the
28 mere carelessness, neglect, and improper conduct of said defendant and its servants in that behalf, the said goods, chattels, and live stock, at Chicago aforesaid, being of the value aforesaid, afterwards, to wit, on the day and year aforesaid, to wit, at said northern district, became and were wholly lost to said plaintiff.

And whereas, also, the said defendant afterwards, to wit, on the twentieth day of February, in the year of our Lord one thousand eight hundred and seventy-eight, to wit, at the district aforesaid, became and was indebted to the said plaintiff in a large sum of money, to wit, the sum of thirty thousand dollars of lawful money, for the work and labor, care and diligence, attention and attendance of the said plaintiff by the said plaintiff before that time done, performed, bestowed, and given in and about the goods, chattels, wares, machinery, property, premises, possessions, and business of the said defendant and for the said defendant, and at the special instance and request of said defendant, and also for divers materials and other necessary things by the said plaintiff before that time found, furnished, provided, used, and applied in and about that work and labor for the said defendant, at the like special instance and request of said defendant; and being so indebted to the said plaintiff, the said de-
29 fendant, in consideration thereof, afterward, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay to said plaintiff said sum of money last mentioned when the said defendant should be thereunto afterwards requested.

And whereas, also, afterward, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had before that time done, performed, bestowed, and given other work and labor, care, and diligence, attention and attendance of the said plaintiff in and about the goods, chattels, wares, machinery, property, premises, possessions, and busi-

ness of the said defendant at the request of said defendant, and had also, at the like special instance and request of said defendant, before that time found, furnished, provided, used, and applied divers other materials and necessary things in and about the said last-mentioned work and labor of the said plaintiff, the said defendant undertook and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff so much money as the last aforesaid work and labor and materials of said plaintiff, at the time aforesaid, were reasonably worth when said defendant should be thereunto afterward requested; and the said plaintiff avers that the same, at said time, were reasonably worth the further
30 large sum of thirty thousand dollars of like lawful money, at the time and place aforesaid, whereof the said defendant afterward, to wit, at the time and place aforesaid, had notice.

And whereas, also, the said defendant afterward, to wit, on the same day and year, and at the place aforesaid, became and was indebted to the said plaintiff in a large sum of money, to wit, the sum of thirty thousand dollars of lawful money, for divers goods, wares, and merchandise by the said plaintiff before that time sold and delivered to the said defendant, and at the special instance and request of the said defendant; and being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterward, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterward requested.

And whereas, also, afterward, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and
31 merchandise of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay to the said plaintiff so much money as the last aforesaid goods, wares, and merchandise, at the time of the sale and delivery thereof, were reasonably worth, when the said defendant should be thereunto afterward requested; and the said plaintiff avers that the said goods, wares, and merchandise last mentioned, at the time of the sale and delivery thereof, were reasonably worth the further large sum of money, to wit, the sum of thirty thousand dollars of like lawful money aforesaid, to wit, at the place aforesaid whereof the said defendant afterward, on the same day and year and at the place aforesaid, had notice.

And whereas, also, the said defendant afterward, to wit, on the same day and year, and at the place aforesaid, became and was indebted to the said plaintiff in the further large sum of money, to wit, the sum of thirty thousand dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the defendant, and at the like request of the said defendant, and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant, and for other money by the said defendant before that time had and received to and for the
32 use of the said plaintiff, and for other money before that time and then due and owing the said plaintiff, for interest upon and for the forbearance of divers other sums of money before that time and then

due and owing from said defendant to said plaintiff; and being so indebted the said defendant, in consideration thereof, afterward, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums of money in this count mentioned when the said defendant should be thereto afterward requested.

And whereas, also, the said defendant afterward, to wit, on the same day and year, and at the place aforesaid, accounted with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further large sum of money, to wit, the sum of thirty thousand dollars, of like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiff the said defendant, in consideration thereof, afterward, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto requested.

33

Nevertheless, the said defendant (although often requested, etc.) has not yet paid the several said sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiff of thirty thousand dollars, and therefore the said plaintiff brings suit, etc.

LARNED, RYERSON AND LARNED,
Plaintiff's Attorneys.

Copy of instrument and account sued on.

MICHIGAN CENTRAL RAILROAD COMPANY,
Chicago Station, Nov. 7th, 1877.

Received from Paris Myrick, in apparent good order, consigned to order Paris Myrick (notify J. and W. Blaker, Philadelphia, Pa.):

Articles.	Marked.	Weight or measure.
Two hundred and two (202)	Cattle	260,000

Advanced charges, $12.00. Marked and described as above (contents and value otherwise unknown) for transportation by the Michigan Central Railroad Company to the warehouse at .

34

(Signed) WM. GEAGAN,
B. *Agent.*

(Endorsed:) PARIS MYRICK.

MICHIGAN CENTRAL RAILROAD COMPANY,
Chicago Station, Nov. 14th, 1877.

Received from Paris Myrick, in apparent good order, consigned to order Paris Myrick (notify J. and W. Blaker, Philadelphia, Pa.)

Articles.	Marked.	Weight or measure
Two hundred and two (202)	Cattle	240,000

Advanced charges, $13,00. Marked and described as above (contents and value otherwise unknown) for transportation by the Michigan Central Railroad Company to the warehouse at

(Signed) WM. GEAGAN,
B. *Agent.*

(Endorsed:) PARIS MYRICK.

(Endorsed:) Filed Feb'y 22, 1878. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 22d day of March, A. D. 1878, said defendant, by its attorneys, filed in said clerk's office its plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

Circuit court of the United States for the seventh circuit and northern district of Illinois, ss. Of the March term, A. D. 1878.

35 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

PARIS MYRICK, FOR THE USE OF THE Commercial National Bank of Chicago,
v.
THE MICHIGAN CENTRAL RAILROAD Company. } Assumpsit.

And the said defendant, The Michigan Central Railroad Company, by Wirt Dexter and A. L. Osborn, its attorney, comes and defends the wrong and injury when, &c., and says that it did not assume or promise in manner and form as the said plaintiff hath above thereof complained against it, and of this it puts itself upon the country &c.

WIRT DEXTER,
A. L. OSBORN,
Att'ys for Defendant.

(Endorsed:) Filed M'ch 22, '78. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 8th day of January, A. D. 1879, in the December term, A. D. 1878, of said court in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

36 PARIS MYRICK FOR THE USE OF THE Commercial National Bank of Chicago,
v.
THE MICHIGAN CENTRAL RAILROAD Company. } Assumpsit.

Now come the parties by their attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit: S. C. Baldwin, Philip

F. Scanlan, H. A. Wynkoop, Henry J. Farwell, F. E. Hale, Edward Oswin, Orrin Beadle, Pomeroy H. Goodrich, John H. Green, Charles McDonnell, Thomas B. Carter, and Henry L. Bush, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing a part of the evidence, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning.

Afterwards, to wit, on the 9th day of January, A. D. 1879, in the said December term, A. D. 1878, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PARIS MYRICK, FOR USE OF, &C.,
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY. } Assumpsit.

37 Now come again the parties by their attorneys, and now come also the jury in this behalf empanneled and sworn, and after hearing the concluding evidence and a part of the arguments of counsel, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning.

Afterwards, to wit, on the 10th day of January, A. D. 1879, in the said December term, A. D. 1878, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PARIS MYRICK, FOR USE OF, &C.,
v.
THE MICHIGAN CENTRAL RAILROAD COMPANY. } Assumpsit.

Now come again the parties by their attorneys, and now come also the jury in this behalf empaneled and sworn, and after hearing additional arguments of counsel without concluding the same, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning.

Afterwards, to wit, on the 11th day of January, A. D. 1879, in the said December term, A. D. 1878, of said court, in the record of
38 the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PARIS MYRICK, FOR USE OF THE COMMERCIAL NATIONAL BANK OF CHICAGO,
v.
THE MICHIGAN CENTRAL RAILROAD COMPANY. } Assumpsit.

Now come again the parties by their attorneys, and now come also the jury in this behalf empaneled and sworn, and after hearing the concluding arguments of counsel and receiving the instructions of the court, of

jury retired to consider of their verdict, and after a short absence the jury returned into court the following verdict, to wit; We, the jury, find the issue for the plaintiff, and assess his damages to the sum of twenty-six thousand four hundred and fifty-one dollars and twenty-two cents.

And thereupon, the defendant by its attorney, moves the court for a new trial herein.

Afterwards, to wit, on the 20th day of January, A. D. 1879, said defendant, by its attorney, filed in said clerk's office its motion for a new trial of said entitled cause, which said motion is in the words and figures following, to wit:

39 *Motion for new trial.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois.

PARIS MYRICK, FOR THE USE OF THE COMMERCIAL NATIONAL BANK OF CHICAGO,
v.
THE MICHIGAN CENTRAL RAILROAD CO. } Motion for a new trial.

And now comes the defendant, by Wirt Dexter, its attorney, and moves the court to set aside the verdict rendered and to grant a new trial in this cause; and for grounds of this motion the defendant shows to the court the following, to wit:

1. The court admitted on the trial improper evidence on the part of the plaintiff.
2. The court refused to admit proper evidence offered by the defendant.
3. The court gave to the jury improper instructions asked by the plaintiff.
4. The court refused to give to the jury proper instructions asked by the defendant.
5. The court improperly modified the instructions asked by the defendant.

40 6. The court of its own motion gave to the jury erroneous instructions.

7. The verdict is contrary to the law and evidence.
8. The damages are excessive.

WIRT DEXTER,
Attorney for Defendant.

(Endorsed:) Filed Jan'y 20, 1879. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 2d day of May, A. D. 1879, in the adjourned March term of said court, in the record of the proceedings thereof in said

entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PARIS MYRICK, FOR USE OF THE COMMERCIAL National Bank of Chicago,
v.
THE MICHIGAN CENTRAL RAILROAD COMpany. } Assumpsit.

Now comes the defendant, by its attorney, and the motion of the defendant heretofore entered herein for a new trial of this cause now coming on to be heard, after hearing said attorney, the court overrules said motion and awards judgment. It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendants the
41 said sum of five thousand dollars, the debt so as aforesaid found, together with the costs and charges in this behalf expended, amounting to the sum of eighty-nine dollars and seventy-one cents, and that it have execution therefor, to be satisfied and discharged upon the marshal making thereon the said sum of five thousand dollars its damages, together with its costs and charges herein.

42 On the same day, to wit, the 2d day of May, A. D. 1879, on the trial of said cause, the following exceptions were taken and allowed by the court and made of record in said entitled cause, to wit:

Bill of exceptions.

In the United States circuit court for the northern district of Illinois, December term, A. D. 1879.

PARIS MYRICK, FOR THE USE OF THE COMmercial National Bank of Chicago,
vs.
THE MICHIGAN CENTRAL RAILROAD COMpany. } Assumpsit.

Be it remembered that heretofore, on the trial of the above-entitled cause, before the Hon. Henry W. Blodgett, one of the judges of said court, and a jury, the plaintiff, to maintain the issues on his part, gave evidence tending to prove:

(1.) That in the year 1877 the plaintiff, Myrick, was engaged in buying cattle at the Union Stock Yards, at Chicago, Illinois; that on the 7th day of November, A. D. 1877, he delivered to The Commercial National Bank of Chicago a draft drawn by himself, as follows:

$12,287.57.] CHICAGO, *Nov.* 7, 1877.

Pay to the order of Geo. L. Otis, cashier, twelve thousand two hundred & eighty-seven $\frac{57}{100}$ dollars, value received, and charge the same to account of

(Signed) PARIS MYRICK.

To J. AND W. BLAKER,
Newtown, Pa.

952——2

43 That the plaintiff also endorsed and delivered to the said bank, to be attached to the said draft, a receipt or bill of lading, which was, on its face, as follows:

MICHIGAN CENTRAL RAILROAD COMPANY,
Chicago Station, Nov. 7th, 1877.

Received from Paris Myrick, in apparent good order, consigned order Paris Myrick (notify J. and W. Blaker, Philadelphia, Pa.):

Articles.	Weight or measure.
Two hundred and two (202) cattle	240,000

Advanced charges, $12.00. Marked and described as above (contents and value otherwise unknown) for transportation by the Michigan Central Railroad Company to the warehouse at

WM. GEAGAN, *Agent.*

(On margin:) This company will not hold itself responsible for the accuracy of these weights as between buyer and seller, the approximate weight having been ascertained by track-scales, which is sufficiently accurate for freighting purposes, but may not be strictly correct as between buyer and seller. This receipt can be exchanged for a through bill of lading.

NOTICE.—See rules of transportation on the back hereof. Use separate receipts for each consignment.

On the back of said receipt or bill of lading was also printed the following notice:

RULES RELATING TO TRANSPORTATION.

1. The corporation will not receive or carry any bank bills, drafts, notes, deeds, contracts, or other writings, or be responsible for their loss or injury.

2. No conductor or other agent of the company is authorised to take charge of bank notes, money, or other valuable papers or things for or on account of the company, or to receive any perquisite or reward for
44 himself or for the company on or for such articles.

3. No gold or silver coin or bullion, or manufactured articles of gold or silver, jewels, watches, pictures, plated articles, statuary, musical instruments, glass, silks, or laces will be carried by the corporation for the loss of which it will be responsible, unless with such articles when delivered is also delivered a memorandum in writing stating the character and kind of articles and their value, and unless a proper extra price for the carriage and responsibility for such articles be paid.

4. Gunpowder, friction matches, and combustible articles of any description will not be taken on any terms, and if found secreted or among other goods they will be forfeited or destroyed, and in case of damage the shipper or consignor will be held liable therefor.

5. Articles will not be received for transportation unless properly packed

in suitable casks, boxes, bales, or packages, and each must be well and clearly marked with the name of the consignee and of the station where they are to be delivered, otherwise they will not be receipted for, in which case no damages for the loss or miscarriage will be paid. The company will in no case be responsible for loss, injury, or damage which might have been avoided by skilful and more careful and efficient packing, or which occurs without the negligence or fault of the company or its agents. All property is subject to cooperage when necessary.

45 Goods in bundles will not be considered as properly packed, and the company will not be responsible for any loss of parts or of the whole of such packages.

No allowance for deficiency of lemons, oranges, or other fruit, if not covered with canvass, will be made.

6. The corporation will not be liable for property unless receipted for by a duly authorised agent, and the destination of the property cannot be changed after being loaded in the car.

7. The corporation will not be responsible for damage occasioned by delays from storms, accidents, or other unavoidable causes or by the decay or injury of perishable articles, or from injury to property produced by frost, heat, or the elements. Perishable property must always be prepaid.

8. The corporation will be liable as warehouse men only for property while in their storehouse.

9. Storage at customary rates will be charged on all property not taken from the warehouse within one day.

10. The company will not be responsible for loss or injury happening or occasioned by unruly or vicious horses, cattle, swine, or sheep, nor for accidents to the same when the agents of the company are not in fault in loading or unloading the same.

11. Goods or property consigned to any place off the company's line of road, or to any point or place beyond the termini, will be

46 sent forward by a carrier or freightman, when there are such, in the usual manner, the company acting for the purpose of delivery to such carrier as the agent of the consignor or consignee, and not as carriers. The company will not be liable or responsible for any loss, damage, or injury to the property after the same shall have been sent from any warehouse or station of the company.

(Endorsed:) PARIS MYRICK.

(Erased:) Cattle within named were delivered to North Phil. Stock Yard.

That on the 14th day of November, A. D. 1877, said Myrick delivered to said bank, a similar draft, except as to date and amount—the amount being twelve thousand four hundred and forty-eight dollars and twelve cents ($12,448.12), and the date being November 14th, 1877, and also attached to the same a receipt or bill of lading which was on its face as follows:

MICHIGAN CENTRAL RAILROAD COMPANY,
Chicago Station, Nov. 14th, 1877.

Received from Paris Myrick, in apparent good order, consigned order Paris Myrick (notify J. and W. Blaker, Philadelphia, Pa.):

47	Articles.	Weight or measure.
	Two hundred and two (202) cattle	260,000

Advanced charges, $13,00.

Marked and described as above (contents and value otherwise unknown) for transportation by the Michigan Central Railway Company to the warehouse at

WM. GEAGAN, *Agent.*

NOTICE.—See rules of transportation on the back hereof. Use separate receipts for each consignment.

(On margin:) This company will not hold itself responsible for the accuracy of these weights as between buyer and seller, the approximate weight having been ascertained by track scales, which is sufficiently accurate for freighting purposes, but may not be strictly correct as between buyer and seller. This receipt can be exchanged for a through bill of lading.

(Endorsed:) PARIS MYRICK.

(Erased:) Cattle within named were delivered to North Phila., Stock Yard.

48 That on the back of said bill of lading were printed the same rules and regulations as on the back of said bill of lading dated November 7th, 1877. That both of said receipts or bills of lading were endorsed by said Myrick to said bank, and were so endorsed as security for the drafts to which they were attached. And that the amount of each of said drafts represented the cost of the cattle referred to in the bill of lading to which it was attached, plus the exchange. And that the amounts represented by said drafts, less exchange, were paid by said plaintiff on checks drawn on said bank in payment for the cattle referred to in the bills of lading. That in the usual course of business of said bank, after passing the proceeds of said drafts to the credit of said Myrick, the said drafts and bills of lading attached were forwarded by the first mail to the First National Bank at Newtown, Pennsylvania, for collection. That there was no letter of instructions with the first draft, and that the letter accompanying the draft of November 14th, 1877, contained the following instructions: "Deliver bills of lading only when draft is paid." That the drafts were never paid, and that the bank did not receive the property mentioned in the bills of lading or receipts. That the said Myrick had been dealing with The Commercial National Bank for three or four months prior to these
49 transactions and always in the same manner, and that the said bank indicated to the said Myrick the form of receipt they wished him to obtain from the railroad company. That said Myrick testified that he thought the R. R. Co. knew how he raised the money to buy these cattle; that he told the co. that he wanted the bills of lading for the Commercial National Bank.

(2.) That the said Michigan Central Railroad Company, defendant, was a common carrier to Detroit, and that the said receipts or bills of lading were delivered to the said Myrick by the shipping agent of the said Michigan Central Railroad Company, or his clerk, at the said stock yards; that the said Myrick had been in the habit of shipping cattle

over the Michigan Central Railroad for a number of months, and that the said receipts were in the usual form of receipts or bills of lading which had been given to him; that the through rate for said cattle referred to in said *said* two receipts to Philadelphia was fifty-eight cents per hundred; that at the time of these shipments there was a regular rate of 58 cents per hundred from Chicago to Philadelphia, which rate was posted up in the freight depot of the defendant, and that the defendant took these cattle consigned to Philadelphia at the regular through rate of fifty-eight cents a hundred; that the said rate of fifty-eight cents was made up of the sums apportioned to the different roads over which said cattle passed, each road receiving a cer-
50 tain proportion for the distance they carried; that it was the custom to follow the property shipped by way-bills, specifying how much each road in the line was to receive as its freight, and that no freight was paid in advance on said cattle by said Myrick; that the names of connecting roads over which the cattle were to be transported were not mentioned at the time of making the contracts in evidence with Myrick, and the freight agent of def't did not know that Myrick was aware what particular roads the cattle were going over.

(3.) That the said J. & W. Blaker were dealers in cattle at the North Philadelphia Drove Yards, Philadelphia, and had particular pens in said yards assigned to them for their cattle; that the two lots of cattle mentioned in the said two receipts or bills of laden were received by the said Michigan Central Railroad Company on the day of the dates of the said bills of lading and were transported to Philadelphia over the Michigan Central, the Great Western, the New York and Erie, the Lehigh Valley, and the North Pennsylvania Railroads, arriving at Philadelphia on Sunday, the 11th, and Sunday, the 18th days of November, respectively; that on their arrival they were delivered at the North Philadelphia Drove Yards, and were put by the superintendent of said drove yards in the pens assigned to the said Blakers, and were sold by the said
51 Blakers on the day following their arrival; that the said Blakers did not produce any bills of lading for said lots of cattle, and none were asked for by either the stock yards company or the railroad company; that the said Blakers paid the entire freight on both the said lots of cattle to the said North Philadelphia Drove Yard Company, but did not pay said drafts, and that the said cattle were so sold for between twenty-five thousand and twenty-six thousand dollars.

(4.) On cross-examination of plaintiff's witnesses evidence was elicited tending to prove that the said Myrick bought the cattle referred to in said bills of lading for J. & W. Blaker; that he had been buying cattle for them since the 10th of January, 1877, and had been dealing with said bank and drawing drafts in the same manner for three or four months prior to these transactions, and that the cattle bought by him he bought as agent of the said Blakers, and that he received his compensation in the drawbacks allowed him by the railroads transporting the cattle, and in those cases where he got no drawbacks said Blakers paid him for his services; that from October 13th, 1877, no drawbacks were allowed by the railroad companies; that he had no interest in the business of said Blakers, and acted solely as their agent and buyer at Chicago, but that Myrick always ob-
52 tained the money with which to purchase the cattle so shipped on drafts drawn by him on the Blakers, which were cashed by

the bank, and the bills of lading for the cattle were assigned to the bank as security for the payment of the drafts; that it was customary for the Blakers to send a man named Bennett from Philadelphia to Chicago, employed by them by the month to take charge of the cattle shipped by Myrick, and to accompany them to Philadelphia; that Myrick instructed Bennett to go over whatever roads allowed him (Myrick) drawbacks, sometime' over the one and sometimes over another oute; that he received the cattle at Chicago and attended to loading them on the cars, and to feeding and watering them on the route until delivered at the North Philadelphia Drove Yards, at Philadelphia; that Myrick generally shipped the cattle Wednesdays, to arrive in Philadelphia Sunday morning; that it was Bennett's custom to start from Philadelphia Sunday evening, arriving in Chicago Tuesday morning, and leaving Chicago with a shipment of cattle Wednesday, and arriving at Buffalo Friday, Waverly Saturday, and Philadelphia Sunday morning, starting again for Chicago Sunday evening; that Myrick always received orders from the Blakers how many cattle and what kind of cattle to buy; that Myrick did not ask of the shipping agent, from whom the evidence tended to show that he received said bills of lading, and was not informed by him, what said
53 through rate or the rate of freight on said cattle was, but the through rate was posted in def't's depot, and Myrick knew it from having done business with the co.; that said Myrick could have ascertained how said freight was apportioned between the different roads by inquiring of said shipping agent; that said Michigan Central Railroad received of the said through freight its proportion according to the mileage for the transportation to Detroit, and the other roads their proportion, according to the number of miles in the respective lines.

(5) The plaintiff also gave in evidence the said drafts and receipts or bills of lading, dated November 7th and 14th, 1877. Also section 2 of an amendment of the charter of the Michigan Central Railroad Company, approved March 28th, 1846, as follows: Sec. 2. The directors of said Michigan Central Railroad Company, or a majority of them, may make business contracts and arrangements with any railroad company now or hereafter to be organized within or without this State for transportation of persons and property, and for operating the road of any such company, or for any such company operating on the road of said Michigan Central Railroad Company, and for the distribution of mutual receipts and earnings, or other compensations, as may be agreed upon; and the said Michi-
54 gan Central Railroad Company may acquire and hold in fee, or otherwise, lands and buildings within and without this State, for depot and storage purposes, for the convenience of the public, and which may be necessary for the purposes of said corporation.

Also section 1 of an act of the legislature of the State of Michigan, entitled "An act to fix the liabilities of railroad companies as common carriers in certain cases," as follows:

"Section 1. The people of the State of Michigan enact that no railroad company shall be permitted to change or limit its common law liability as common carrier by any contract or in any other manner except by written contract, none of which shall be printed, which shall be signed by the owner or shipper of the goods or property to be carried."

55 Also section 1 of an act of the legislature of the State of Illinois

entitled "An act to fix the liability of common carriers receiving property for transportation, in force July 1st, 1874," as follows:

"Be it enacted by the people of the State of Illinois represented in the general assembly, that whenever any property is received by any carrier to be transported from one place to another *in their* or without this State, it shall not be lawful for such carrier to limit his common law liability safely to deliver such property at the place to which the same is to be transported by any stipulation or limitation expressed in the receipt given for such property."

And the said defendant to maintain the issues on its part gave in evidence:

(1.) The charter of the said Michigan Central Railroad Company, being an act of the legislature of the State of Michigan, entitled "An act to authorize the sale of the Central Railroad and to incorporate the Michigan Central Railroad Company," approved March 28th, 1846. Section 5 of said act provides that the eastern terminus of said railroad shall be within the limits of the city of Detroit and that the western terminus of the same shall be on the southern boundary line of the State of Michigan.

(2.) Also evidence tending to prove that the line of railroad of the said Michigan Central Railroad Company terminates at the said city of Detroit.

That stock received by said Michigan Central Railroad Company for
56 shipment over connecting roads to Philadelphia usually passes over the Michigan Central to Detroit, the Great Western to Buffalo, the New York and Erie to Waverly, the Lehigh Valley to Bethlehem, and the North Pennsylvania Road to Philadelphia, and that it is transferred at Detroit to the Great Western Railroad in about 24 hours from the time it leaves Chicago; that when the stock reaches Detroit with a given amount of charges upon it, being the proportion due the Michigan Central Railroad Company of the rate to Philadelphia, the said Michigan Central Railroad Company collects the same of the road to whom they deliver the stock at the time; that in the transit the stock is unshipped twice, once at Buffalo and once at Waverly, and is reshipped sometimes in the same and sometimes in other cars; that stock-cars starting from Chicago on def't's road with cattle ordinarily go through to Philadelphia without any change; that the through rate is prorated according to the mileage of each road; that each road collects its own freight of the next connecting road and the terminal road connects the total; that it makes no difference whether the terminal road collects or not; that the Michigan Central Railroad Company gets its freight at the time of the transfer, and that is the end of the matter so far as to that road is concerned.

(3.) Also evidence tending to prove that the said North Penn-
57 sylvania Railroad Company received said cattle referred to in said bills of lading, and delivered the same to the said Philadelphia Drove Yard Company; that the said drove yard company have a siding of their own leading to their said stock yards, separate and independant from the railroad of the said North Pennsylvania Railroad and under their own management; that it has always been the custom of the said North Pennsylvania Railroad Company to deliver all cattle to the said drove yard company on the said siding or side track belonging to said drove yard company immediately on the arrival of the cattle, and that said cattle are at once taken from said siding into the stock yards by the super-

intendent of said drove yard company and there unloaded; that it has always been the custom of the said North Pennsylvania Railroad Company to deliver cattle on said siding; that said railroad company have no place to keep said cattle and have never made any preparation for receiving stock, and that such has always been their universal usage; that such delivery is made immediately on the arrival of said stock, and as soon as the cars can be put on said siding; that said railroad company have no facilities for handling or feeding stock or anything of that kind; that the freight or charges on any stock delivered to the drove yards com-
58 pany are received from said drove yards company; that the said North Pennsylvania Railroad Company receives a check once a week for all said freight delivered to said yard; that it has never been the custom of said railroad company to look to the consignees for freight, but that said railroad company gets its said freight from the drove yard company, and hold the drove yard company responsible for all freight and charges for stock delivered to their yard, whether the drove yard company collect it or not; that the said drove yard company charges and collects for yardage and feed on cattle delivered at said yards; that the said drove yard company gives its receipts to the said North Pennsylvania Railroad Company for stock so delivered, and that the freight on the said two shipments of cattle referred to in said bills of lading was paid by the said drove yard company to said North Pennsylvania Railroad Company; that W. W. Sell, the station agent of the North Pennsylvania Railroad at the stock yards in Philadelphia, received the way bill of cattle shipped over the road to that station from the conductor of the train; that the cattle mentioned in the receipts or bills of lading in evidence were delivered by him to the stock yard company November 11th and 18th, 1877, to J. and W. Blaker.

That said cattle referred to in said bills of November 7th and Novem-
ber 14th, 1877, were delivered by said North Pennsylvania Rail-
59 road Company to said North Philadelphia Drove Yard, accompanied by freight bills, as follows:

DROVE YARD, 11, 11, 1877.

Paris Myrick to North Pennsylvania Railroad Co., Dr., ⅔ J. and W. Blaker.

Date.	For freight and charges.		W bill.	Weight.	Dolls	Cents.
	Car.					
Nov. 17.	15 cattle; Erie	30483	676	20,000	53	36
	16 "	30493	670	20,000	53	36
	16 "	30485	671	20,000	53	36
	16 "	30498	672	20,000	53	36
	16 "	30484	673	20,000	53	36
	15 "	30477	675	20,000	53	36
	16 "	30486	677	20,000	53	36
	16 "	30463	679	20,000	53	36
	15 "	30478	680	20,000	53	36
	14 "	30482	682	20,000	53	36
	15 "	30480	681	20,000	31	50
	Expenses "				388	81
	16 " "	30476	678	20,000	31	50
	" "				321	80
	15 "	30492	674	20,000	31	50
	"				221	86
					$1,560	57

JAS. H. STEVENSON, (No. 144.)

DROVE YARD, 11, 11, 1877.

60 *J. and W. Blaker to North Pennsylvania Railroad Co., Dr.*

Date.	For freight and charges.	W. bill.	Weight.	Rate.	Dolls.	Cents.
	Car.					
Nov 10.	16 cattle; Erie 30483	380	20,000	58	53	36
	16 " " 30486	383	20,000	"	53	36
	18 " " 30484	382	20,000	"	53	36
	16 " " 30493	388	20,000	"	53	36
	16 " " 30485	387	20,000	"	53	36
	17 " " 30498	386	20,000	"	53	36
	18 " " 30463	381	20,000	"	53	36
	17 " " 30477	385	20,000	"	53	36
	17 " " 30480	384	20,000	"	53	36
	17 " " 30465	390	20,000	"	53	36
	G. W.				347	75
	17 " " 30496	389	20,000	"	53	36
	M. C.				431	33
	17 " " 30489	391	20,000	"	53	36
	Tan bark, &c.				40	12
					$1,459	52

JAMES H. STEVENSON, (No. 145.)

61 That at the time said cattle were so delivered the superintendent of said drove yard company gave to said North Pennsylvania Railroad receipts for the same as follows:

PHILADELPHIA, *November 11th*, 1877.

Received from the North Pennsylvania Railroad Co. the following packages, in good order and condition:

Marks.

J. and W. Blaker..... 202 cattle.

Erie, 30483, 30486, 30484.
" 30493, 30485, 30498.
" 30463, 30477, 30480.
" 30465, 30409, 30496.

WM. HARRIS, JR.,
For Sup't.

PHILADELPHIA, *November 18th*, 1877.

Received from the North Pennsylvania Railroad Co. the following packages, in good order and condition:

Marks.

J. and W. Blaker..... 201 cattle.

Erie, 30483, 30493, 30485, 30498.
" 30484, 30477, 30486, 30463.
" 30478, 30482, 30480, 30476.
" 30492.

WM. HARRIS, JR.,
Sup't R. H.

62 That at the time said cattle were so delivered the superintendent of said drove yards who received said cattle for said drove yard company saw and inspected the way-bills accompanying said cattle from

Waverly to Philadelphia, and also introduced in evidence; that the words "J. & W. Blaker," appearing upon the way-bills for the shipment of November 17th, under the name of the consignee, were in the handwriting of said witness Sell, and were not upon the way-bills when the said Sell received them. He put them on at the stock yards; that said Sell received said cattle as the agent of the North Pennsylvania Railroad and delivered them to the stock yard company for J. & W. Blaker. The stock yard company gave the railroad company receipts for the cattle and received the cattle called for in those receipts for the parties named in the way-bills of the railroad company. The cattle were delivered to the parties named in the receipts. The cattle called for in the receipts of November 11th and 18th were delivered to J. & W. Blaker. The stock yard company delivers cattle to whomsoever the railroad company directs, and take care of any charges that the railroad company specifies; that the stock yard company did in these instances. At the time the stock yard company received these cattle they had no way-bills or vouchers of any kind relating to the cattle in their possession. No one on the part of the
63 North Pennsylvania Railroad Company asked for the production of such documents at that time, nor did they make any inquiries in relation to the bills of lading. The drove yard company sent Myrick no notice, and had no communication with him at the time in relation to these cattle. They were not requested so to do by the North Pennsylvania Railroad Company. No one on behalf of the railroad company directed the stock yard company to require that the bills of lading should be produced and surrendered for the cattle called for in the way-bills before they were delivered to the Blakers, nor to communicate with any one except the Blakers, nor to communicate with any one at all on the subject. The stock yards hold the cattle subject to the orders of the parties for whom they have received them.

(4.) Also evidence tending to prove that it was the course of business at stock yards in Philadelphia and elsewhere, generally known and acquiesced in, to deliver the stock immediately when called for, without waiting for or requiring the production of bills of lading; and also that it was the custom at stock yards at Philadelphia and elsewhere to deliver cattle consigned in a similar manner to those referred to in the bills of lading in evidence, consigned "P. Myrick; notify J. & W. Blaker," to the party to be notified, if called for by him, on payment of freight and charges, and also that the nature of the business of dealing in live stock is such that there are regular market-days, Monday being the principal market-
64 day in the stock yards in Philadelphia, and that the cattle are shipped on particular days, to arrive and be sold on the market-day following, and that, owing to the expense of yardage and feeding cattle at the stock yards, the nature of the business requires such sale of the cattle by the consignee on the market-day following their arrival. The testimony as to custom herein referred to was in substance as follows:

Thomas B. Shriver, a cattle broker and collector of freights on live stock for the Pennsylvania R. R. and Phil., Wil., & Balto. R. R. at Phila. stock yards, testfies that "according to our rules and customs concerning the delivery of live stock on manifests or way-bills, we only wish to know that the party claiming the stock is the proper party named in the manifests. We do not demand a bill of lading in one case out of a 1,000. I haven't

collected over a dozen bills of lading during the seven years I have been in the business; demanded them because I did not know the parties. There is a necessity in the live-stock business for the prompt or immediate delivery of the stock. The party wishes to sell his live stock as soon as it arrives, to save expense. When we know the parties we ask no questions about bills of lading. Of course, I would have to be satisfied myself. If I had a personal acquaintance or a proper reference, I delivered cattle without the bill. If way-bills came to our yard directed 'Paris Myrick, notify J. & W. Blaker,' I would deliver the cattle called for
65 to J. & W. Blaker on their paying all charges. I should consider it a proper delivery of the stock to either Myrick or Blaker. The business of delivering cattle at the stock yards is very loosely conducted. Our custom with regard to the delivery of cattle is known to those dealing at our yards, and generally acquiesced in."

Alfred M. Fuller, superintendent of the Jersey City Stock Yards, testifies: "We receive from 6,000 to 7,000 cattle weekly. We do not require bills of lading before cattle are delivered, unless it is attached to the manifest. We are governed by the manifest, delivering cattle according to the manifest. This custom is known to those dealing at our yards. I should want the party to whom the cattle were consigned to be identified if I did not know him. The custom with reference to the delivery of cattle is known to those dealing at our yards, and generally acquiesced in."

That after the 27th day of November, 1877, the North Penn. R. R. Co. required that bills of lading of stock should be surrendered before the delivery of the cattle. This was not done as to the two shipments of Nov. 11th & Nov. 18th, 1877, as that was before the arrangement was made.

(5.) Also evidence tending to prove that for three or four months prior to the shipments referred to in the bills of lading in evidence, the said Paris Myrick as agent for the said J. & W. Blaker, had been making similar shipments consigned to the North Philadelphia drove yards in a
66 similar manner as often as once a week, and sometimes twice a week, and had paid for the stock so shipped by checks on said Commercial National Bank, drawn against the proceeds of similar drafts to those in evidence given to said bank, attached to similar receipts or bills of lading to those in evidence duly endorsed by said Myrick. That the receipts and bills of lading, so endorsed, were in the square form as the said bills of lading of November 7th and 14th. That in the usual course of said business, all such drafts, with the bills of lading attached, were sent by said Commercial National Bank on the day when the same were given, or the day following in due course of mail to the First National Bank of Newtown, at Newtown, Pennsylvania. That all said drafts prior to the drafts in evidence were collected by said First National Bank of Newtown from said J. & W. Blaker, and the proceeds remitted by said bank of Newtown to the correspondent of said Commercial National Bank in New York, and were there passed to the credit of the said Commercial National Bank. That generally said Commercial National Bank received notice from their correspondent in New York that the proceeds of the collection of said drafts had been so passed to their credit in 13 or 14 days from the dates of said drafts respectively. That the two drafts preceding the two drafts in question, dated October 25th, and November 1st,

Blaker (through Sell), as follows: "Ship twelve car-loads cattle; Wade starts to-night." That on Nov. 17th, Sell, at request of Julian Blaker, sent a telegram to the operator at Waverly: "Will Blaker's cattle leave Waverly on train 49 to-day?" and received the reply, "Yes." That 13 car-loads of cattle, 201 head were received on Nov. 18th, 1877, and delivered to the stock yards.

Case, cashier of the national bank at Newtown, a witness for defendants, testified that he usually sent notice to Blakers of the arrival of the drafts within a few hours after their receipt, and always on the
73 same day, and that the drafts were usually paid in a short time after notice; sometimes that day, sometimes the next.

That the usual instructions sent to him with these drafts by the Commercial Bank was to deliver the bills of laden only when the drafts were paid. That as the drafts were promptly paid he had no occasion to notify the railroad company, or stock yards, or other parties that he had the bills of lading accompanying the drafts. That the bills of lading were all endorsed, and he surrendered them to the Blakers when they paid the drafts, but in no case until the drafts were paid.

(6th.) Also, evidence tending to prove that the said draft of November 7th, A. D. 1877, with the letter remitting the same was received by the First National Bank of Newtown, on November 19th. That between that time and November 21st (on the evening of the 20th or morning of the 21st) the draft of November 14th and the letter remitting the same were also received by said bank, and that on the 21st of November the said First National Bank of Newtown acknowledged the receipt of both of said drafts by telegram and letter. That the only evidence that the said Commercial National Bank remitted the said draft of November 7th, on the day or the day following its date, was the evidence of the cashier of said Commercial National Bank that such was the usual course of business of said Commercial National Bank in remitting
74 drafts. That the said previous shipments of cattle were delivered to the said Blakers by the said drove yard company, without the production of any bills of lading. That neither the said Commercial National Bank, nor the said First National Bank of Newtown, or any one for them, notified said drove yard company or the said North Pennsylvania Railroad Company that they held any of said previous bills of lading, and that no notice was given to said drove yard company, or to said railroad company that the said bank held said bills of lading in evidence, until November 27th, A. D. 1877, when the cashier of said First National Bank of Newtown telegraphed from Newtown to the general freight agent of said North Pennsylvania Railroad Company, under date of November 26th, A. D. 1877, as follows: "Do not deliver cattle shipped from Chicago to J. & W. Blaker until bills of lading of November 10th and 14th, which I hold, are presented." (Signed) "S. C. Case, cashier;" and that said telegram was received on the morning of the 27th. On November 21st, A. D. 1877, Case, cashier, telegraphed Otis, cashier: "Drafts on Blaker's, dated November 7th and 14th, at hand. They are absent from home and we cannot get their acceptance. Shall we protest and return, or hold for acceptance." And received this reply, dated November 21st: "Hold drafts for payment, and advise by wire when paid."

75 Under date of November 21st, A. D. 1877, Case, cashier,

wrote to Otis, cashier, as follows: "Your telegram in regard to Blaker draft, saying hold drafts for payment, advise by wire when paid, received this p. m." The drafts reached us quite close together. The first must have been delayed on the route; I am unable to reach parties or draft presents; one of the firm, we are told, is gone to Chicago, and the other is said to be in Philad'l'; I am told they will be at home on Thursday or Friday of this week, and through advice of your telegram will hold draft and present as soon as possible, and if not accepted, will return at once, if not otherwise directed by you. Please advise immediately on receiving this, if you advise any thing further. The parties have been quite prompt in paying drafts until this week; they have made no deposit up to this date; I confess I do not quite understand this action; I am afraid they are attempting more than they can get through with. If you are cashing these drafts I suppose you hold collateral; I am fearful that their buyer (at Chicago) is pushing the stock on to them without regard to markets."

On the 26th of November, A. D. 1877, Otis telegraphed to the First National Bank of Newtown: "Are drafts on Blaker paid yet; if not, give reason; are you holding bills lading?" to which Case replied under date of November 26th, "Blaker draft not paid; report of their failure just
76 received from Philadelphia. Have held drafts just as you requested, also bills of lading." Otis then telegraphed Case as follows, under date of November 26th: "Please send man to look up the stock at our expense, and advise me if all right:" Also, in a telegram on same day: "Yours received; the drawer of the drafts is in Philadelphia, and will attend to the stock. I presume you hold bills of lading." Case telegraphed to the general freight agent of the North Pennsylvania Railroad Company as above, after receipt of these telegrams, and on the same day, and also the cashier of the Shackamaxon Bank of Philadelphia, as follows: "Have man look after Blaker's cattle, if any can be found, and advise me;" to which he received telegram in reply, dated November 27th: "Blaker has no cattle that I can find." On the 27th of November, Case telegraphed Otis: "Myrick gone home, cattle delivered to Blaker without bills of lading and sold. Blaker's refuse to accept draft; shall we protest?" to which Otis replied on the same day: "Yours received, protest; and hold for further orders. How do you understand it, are not the railroad responsible; give me name of company issuing bills, and are they marked original?" And the same day Case telegraphed Otis; "We protested draft as you requested; am not sure railroad is responsible; think doubtful; see no mark of original on bills you sent with drafts; the bills or receipts are issued by the Michigan Central and signed William
77 Gegon, agent, and was on end "this receipt, can be exchanged for through bill of landing." On November 30th Otis telegraphed Case: "Return drafts and bills lading at once;" and on December 4th, "Have you returned our drafts and bills as requested on 30th?" On November 26th Otis wrote Case: "I have your favor of the 21st, and also your telegrams of this date in answer to mine. I wired you this morning before receiving your letter. Myrick, the drawer of the drafts, is in Philadelphia, and I have no doubt is giving the matter all the attention it needs, but as the amount involved is large, I am somewhat anxious, and hence have just wired you to send man at my expense over to Philadelphia yards and attend to stock if necessary. Your letter seems to have

been 5 days on the way. The bills of lading held the stock, and I presume Myrick will try and dispose of it, and pay the draft. Please keep me posted by wire." In the letter to Otis of December 8th, giving the statement as to drafts and quoted above, Case also says: "Blakers live a few miles out of town, and they have been so constantly from home looking after stock, that it was impossible to always reach them without some little delay. The following is our record of the payment of the six drafts (giving dates as above). The time of these differ but little, except the first and last. In the first the time was short, because they were
78 here when the draft arrived, and the letter came direct. In the last the letter was late in arriving, and they, being absent, had to be looked up. The delay in drafts of October 25th and November 1st appears mainly in time of remittance reaching you, the first being 11 and the last 6 days. The last 2 came one upon the other. As I wrote you, I was unable to reach them to get acceptances, and telegraphed you at once. When drafts were delayed in reaching us, we supposed they had purchased in Buffalo, as was their custom sometimes.

The court thereupon charged the jruy as follows:

Charge to the jury.

In the circuit court of the United States for the northern district of Illinois.

PARIS MYRICK
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY. } January 11th, A. D. 1879.

By BLODGETT, J.

GENTLEMEN OF THE JURY: This suit is brought to recover damages for the breach of two contracts which the plaintiff claims he made with the defendant as a common carrier, one on the 7th and the other on the 14th day of November, 1877, for the transportation of beef cattle from Chicago to Philadelphia, the allegation on the part of the plaintiff being that on the 7th of Novem-
79 ber, 1877, he delivered to the defendant, at the stock yards in this city, and the defendant there accepted 202 head of beef cattle, to be transported by the defendant, as a common carrier, from this city to Philadelphia, Pennsylvania, and there delivered to the plaintiff, or his order. That the plaintiff received from the defendant a bill of lading or receipt for said cattle, and that he duly endorsed the same to The Commercial National Bank, as security for a loan of money advanced by said bank to the plaintiff to pay for the said cattle; and that thereby the defendant became bound to safely transport the said cattle to Philadelphia, and there deliver them to the said bank, or its proper agent; that the defendant failed to perform its said contract, and neglected and failed to deliver said cattle to the said bank or its agent, whereby the said cattle were wholly lost to the plaintiff and the bank. It is also alleged that a similar contract in all respects was made by the plaintiff with the defendant on the 14th of November, 1877, for another lot of 202 head of beef cattle, and that the defendant has failed to perform the said contract in the same manner as he failed to per-

form the first. The defendant contends, first, that it owns and operates a railroad from Chicago to Detroit, and that while it received the
80 cattle and carried them on its own line as far as Detroit, yet it did not undertake to transport beyond Detroit, but that its obligation to the plaintiff was fully performed when it delivered the cattle to the connecting carrier at Detroit, in the route to their place of destination. Second, even if the contract with the plaintiff was for the transportation of the cattle in question from Chicago to Philadelphia, it has fully performed its undertaking in that behalf by the delivery of the cattle to the North Philadelphia Drove Yards Company, and is not liable for any misconduct or neglect on the part of the drove yards company, as to the delivery of said cattle.

It is conceded that the plaintiff did ship by the defendant's railroad the two lots of cattle in question; that the cattle passed over the defendant's railroad to Detroit, and from there over connecting lines of railroad to Philadelphia, reaching Philadelphia by what is known as the North Penn. Railroad; and that the North Penn. Railroad delivered the cattle to what is known as the North Philadelphia Drove Yards Company, a corporation or firm owning and managing certain cattle yards in the vicinity of Philadelphia, supplied with conveniences for receiving, yarding, and feeding live stock; that the first lot of said stock arrived at the drove yards on the 11th of November, and the last arrived there on the 18th of November, and that the officers or managers of the drove yards de-
81 livered the cattle to J. & W. Blaker without the surrender of the receipt or bill of lading which the defendant had issued to Myrick, and which Myrick had endorsed to the bank, and without the order of Myrick.

It is claimed by the plaintiff that by the terms of the shipment it became the duty of the defendant, as a common carrier, to notify J. and W. Blaker of the arrival of said cattle at their place of destination; that no rightful delivery could be made except upon the order of Myrick and the surrender of the bill of lading; but that, without the order of Myrick, the cattle were wrongfully delivered to the Blakers, who sold them and converted the proceeds to their own use, whereby the cattle were wholly lost to the plaintiff and to the bank who had advanced the money upon them.

The first question is, did the defendant make a contract to transport these cattle through from here to Philadelphia? It was competent for the defendant, as a common carrier, to contract for the transportation of these cattle beyond its own terminus and to Philadelphia. If such a contract was in fact made, the carriers beyond the defendant's terminus—that is, beyond Detroit—to the place of destination became the agents of the defendant to complete the contract, and the defendant is liable for any breach of this contract whereby the plaintiff sustained damage.

82 Considerable discussion has been had before the court upon questions of law raised upon the receipts which were given to the plaintiff at the time the cattle were shipped, the question being whether these receipts were or were not a through bill of lading. I at first was inclined to submit this as a question of fact to the jury; that is, to submit all the testimony, and allow the jury to say, as a question of fact, whether

the defendant did, when all the testimony was considered, contract to transport these cattle through to Philadelphia, but, upon further reflection, I have concluded that that is solely a question of law for the court upon the construction of this receipt, and in the light of the testimony, which the court has the right to consider.

In construing a written contract, courts have a right to hear, to a certain extent, parole evidence as to the circumstance under which the contract was entered into, for the purpose of determining its purport and effect—that is to say, the court has the right to ascertain what the surrounding facts and circumstances were, in order to determine the intentions of the parties in making the contract or in using the language which is embodied in the contract. Perhaps the rule asserting the right of the court to look into the surrounding facts connected with the making of a contract
83 for the purpose of determining its meaning has never been more lucidly stated than by Mr. Justice Caton, of the supreme court of Illinois, in the case of Doyle vs. F. Tees, reported in the 4th Scammon: "The true rule clearly deducible from the case, I think, is, where the language is of such a character as used, that the parties had a fixed and definite meaning, which they intended to express, and used language adequate to convey that idea to persons possessed of the facts which they had in view at the time they used the language, it then becomes the duty of the court to learn those facts, if need be, by parole proof, and thus, as far as possible, by occupying the place of the parties employing the expression, ascertain the sense in which they were intended to be used."

Now, taking into consideration, then, the circumstances concerning the making of this bill of lading which appears in the proof, I come to the conclusion, and so say to you, gentlemen of the jury, that this bill of lading is a through contract, whereby the defendant agreed to transport the cattle named in this bill of lading or receipt from Chicago to Philadelphia, and there deliver them to the order of Paris Myrick, and to notify J. and W. Blaker of their arrival. This was the undertaking on the part of the defendant with the plaintiff, and with whoever might be made the assignee or holder of this contract. It then became the duty of the defend-
84 ant, if the defendant's road did not reach to the place of destination of the property shipped under this bill, to properly notify or inform each of the carriers beyond the defendant's own terminus of the terms upon which the shipment was made, and each of the carriers beyond the defendant's terminus is, for the purpose of executing this contract, the agent of the defendant, and as completely bound to carry out the terms of the contract as if the defendant's railroad extended from here to the place of destination, and the agents of the last carrier who transported the cattle are the agents of the defendant for the purpose of executing this contract and seeing that its terms are complied with.

This, then, being a through contract, the only question is whether there has been a breach of it. The defendant insists that owing to the peculiar nature of live stock as freight it is not to be considered as ordinary merchandise; that it must be yarded, watered, and fed, not only at the terminus of the route, but along the route, and that peculiar accommodations are required for that purpose which railroad companies do not usually have, and that the plaintiff knew when he shipped this stock that the railroad company at the terminus or place of destination had no facilities of

its own for caring for the cattle, but that its course of business was to deliver to this drove yard company, and that therefore the con-
85 tract of carriage was completed when the delivery was made to the drove yard company. Undoubtedly this kind of freight must have accommodations adapted to it, and railroad companies that become carriers of live stock may provide such accommodations themselves or may adopt those provided by other independent companies or persons; but if they adopt the yards of another they thereby make them their own for the purpose of performing their contract the same as if they were their own depot, and the managers of the yards their servants and agents. As with merchandise, they are bound to provide a depot or freight-house in which the goods may be safely and properly kept and cared for until the delivery can be made to the consignee according to the terms of the shipment. For this purpose, as I have already intimated, the railroad company, as a common carrier, had a right to make this drove yard its warehouse or place for the storage of these cattle, and the drove yards were required to hold the cattle, as the railroad company itself would have been compelled to hold them, until the consignee called for them, or until a reasonable time elapsed. The cattle being of course expensive to keep, they would be kept at the expense of the consignee, and the charges upon them would be additional charges upon them to be paid whenever they were taken away; and if they were detained an unreasonable time, then, under the law pertaining to the rights and duties of common car-
86 riers, the drove yard company would be entitled to sell the cattle as perishable property for the expenses if there was danger of the charges upon them overrunning or nearly approaching to their value, they would not be obliged to keep them indefinitely, but they would be obliged to keep them a reasonable time the same as a railroad company is obliged to keep goods a reasonable time after they arrive at the terminus, in order that the charges may be paid & the goods taken away; so that, as I have already instructed you, the defendant, by its contract, agreed to transport these two lots of cattle to Philadelphia and deliver them to the order of Paris Myrick there, and to notify J. and W. Blaker; and it being admitted, or at least not disputed, that Myrick had duly assigned and delivered the receipt given him by the defendant to The Commercial National Bank to secure the advance of money, and if you are satisfied from the proof that the railroad companies in the route who transported the cattle to Philadelphia delivered them to the drove yard company mentioned in the proofs, and that the persons in charge of the said drove yard did, on the day after the arrival of each of the said lots of cattle, deliver them to J. & W. Blaker without the order of Myrick, and that The Commercial National Bank of this city thereby lost the said cattle, or the benefit of them, or the proceeds thereof, then the defendant is liable to the plaintiff in this action, it being
87 a part of the duty of the defendant, if it or its agent, the railroad company at the terminus, delivered the cattle to the drove yard company, to accompany the cattle with the proper direction for their being delivered only to the order of Myrick, and if the railroad company failed to properly direct the drove yard company, or if they had been properly directed, and the drove yard company had delivered them improperly, then the defendant, in either event, would be liable. That is, it makes no difference whether the North Penn. Railroad Company, who made the de-

livery to the drove yard company, made the mistake, or whether the drove yard company made the mistake and delivered the property wrongfully. In either event the defendant is liable, as both these parties were agencies by which the defendant undertook to complete its contract. It is contended by the defendant that by the course of business growing out of a series of shipments by the plaintiff over the defendant's line to the same destination, a usage had grown up to deliver the cattle to the Blakers upon substantially such contracts as this, and upon this point I say to you the parties to a contract may, by a usage, change the mode of delivery, yet, in order to warrant a delivery contrary to the terms of the contract, it must appear satisfactorily, from the evidence, that the plaintiff knew that the terms had been changed at the terminus; and that
88 in this case, if you believe from the evidence that the plaintiff assigned his bill of lading or receipt to The Commercial National Bank as security for a loan or advance of money, then no mere usage between the plaintiff and the defendant in that regard contrary to the terms of the contract would affect the rights of the bank as the holder of this bill of lading—that is to say, the bank had the right to have the contract executed according to its terms, unless the proof shows to your satisfaction that the bank had become cognizant of a usage by which the terms were changed, and acquiesced therein. Then, gentlemen of the jury, the next thing for you to consider will be the measure of damages. The evidence in the case, which is undisputed, as I may say, shows that Myrick immediately upon receiving this bill of lading, that is, as soon as the two things could follow each other in the due course of business, on receiving this bill of lading repaired to The Commercial National Bank, where he received a discount or advance of money to the amount of $12,287.54 on the shipment of the 7th of November, and $12,448.12 on the shipment of the 14th of November, and that he drew drafts on J. and W. Blaker for these respective amounts, and secured the payment of the drafts by assigning these bills of lading to the bank and delivering the bills of lading,
89 and that these bills of lading went forward with the drafts to the First National Bank of Newtown, Pennsylvania, for collection. The evidence in the case tends to show, and perhaps does show without dispute, that Myrick, the plaintiff in this suit, bought the cattle in question for the Blakers; that is, he was the agent of the Blakers here for the purchase of the cattle; he had no interest in the cattle further than to be reimbursed for the money which he borrowed and became responsible for to pay for the cattle. That arrangement was that he was to buy the cattle—as I understand it from the proof—he was to buy the cattle here in Chicago, make drafts upon the Blakers for the purchase money, and send those with his bills of lading forward for collection, and he was compensated for his services in the matter by a drawback which he received from the railroads for furnishing them with this large amount of freight. The proof is so uncertain as to the amount of the drawback to which Myrick was entitled under his arrangements with the railroad, and as to whether he collected the drawback from each railroad separately, or whether some one railroad paid him the whole and settled with the other members of the combination or line, that I do not think the jury can predicate any claim in favor of the plaintiff upon this drawback item. It is left wholly uncertain,
90 as I conceive it by the proof, in the first place, as to how much

drawback Myrick was to have. There is some proof that Myrick, when he went to Philadelphia after the cattle had been sold by the Blakers, said that he expected to have got $600; but he supposed he would have to lose it now. The fair inference, perhaps, from that testimony would be that the Blakers obtained in some way the drawback and paid it to him; but it is so uncertain that it would be, I think, unsafe. There is no safe basis to adopt in attempting to estimate what Myrick's interest was in the cattle growing out of his right to this drawback, and I therefore direct you to exclude that from your consideration, and simply give, as damages in this case, if you are satisfied from the instructions that I have given, that the plaintiff is entitled to recover the amount of these two drafts, with interest thereon at six per cent. from the time the cattle were wrongfully disposed of, which was, in one case, by the undisputed testimony, the 12th of November, 1877, and in the other the 19th of November, the cattle having arrived in Philadelphia on Sunday in each case, and having been disposed of on the following Monday:

By Mr. LARNED:

There is only one thing which the jury might not understand. I understand it, but perhaps they do not. Your honor spoke about the order of Myrick, that he had given an order or a draft to The Commercial
91 National Bank. After he had endorsed it, then I don't suppose your honor means the jury to understand that he then could give any further order.

The COURT:

The order of Myrick would be the presentation of the bill of lading, with his order upon the back of it, to the bank.

Mr. LARNED. That would terminate his right to give any further order.

The COURT. That would terminate his right to give any further order.

The jury may retire.

The defendant, on the giving of such charge to the jury, objected and excepted to that portion of the charge which states:

"Considerable discussion has been had before the court upon questions of law raised upon the receipts which were given to the plaintiff at the time the cattle were shipped, the question being whether these receipts were or were not a through bill of lading. I at first was inclined to submit this as a question of fact to the jury—that is, to submit all the testimony and allow the jury to say, as a question of fact, whether the defendant did, when all the testimony was considered, contract to transport these cattle through to Philadelphia; but, upon further reflection, I have
92 concluded that that is solely a question of law for the court, upon the construction of this receipt and in the light of the testimony, which the court has the right to consider."

Also to that portion which states:

"Taking into consideration, then, the circumstances concerning the making of this bill of lading, which appears in the proof, I come to the conclusion, and so say to you, gentlemen of the jury, that this bill of lading is a through contract, whereby the defendant agreed to transport the

cattle named in this bill of lading or receipt from Chicago to Philadelphia and there deliver them to the order of Paris Myrick, and to notify J. and W. Blaker of their arrival. This was the undertaking on the part of the defendant with the plaintiff, and with whoever might be made the assignee or holder of this contract."

Also to that portion which states:

"It then became the duty of the defendant, if the defendant's road did not reach to the place of destination of the property shipped under this bill, to properly notify or inform each of the carriers beyond the defendant's own terminus of the terms upon which the shipment was made; and each of the carriers beyond the defendant's terminus is, for the purpose of executing this contract, the agent of the defendant, and as completely bound to carry out the terms of the contract as if the defendant's
93 railroad extended from here to the place of destination, and the agents of the last carrier who transported the cattle are the agents of the defendant for the purpose of executing this contract and seeing that its terms are complied with."

Also to the portion which states:

"Undoubtedly this kind of freight must have accommodations adapted to it, and railroad companies that become carriers of live stock may provide such accommodations themselves, or may adopt those provided by other independent companies or persons; but if they adopt the yards of another, they thereby make them their own for the purpose of performing their contract the same if they were their own depot and the managers of the yards their servants and agents. As with merchandise, they are bound to provide a depot or freight-house in which the goods may be safely and properly kept and cared for until a delivery can be made to the consignee according to the terms of the shipment. For this purpose, as I have already intimated, the railroad company, as a common carrier, had a right to make this drove yard its warehouse or place for the storage of these cattle, and the drove yards were required to hold the cattle as the railroad company itself would have been compelled to hold them until the consignee called for them, or until a reasonable time elapsed. The
94 cattle being of course expensive to keep, they would be kept at the expense of the consignee, and the charges upon them would be additional charges upon them to be paid whenever they were taken away; and if they were detained an unreasonable time, then, under the law pertaining to the rights and duties of common carriers, the drove yard company would be entitled to sell the cattle as perishable property for the expenses. If there was danger of the charges upon them overrunning or nearly approaching to their value, they would not be obliged to keep them indefinitely; but they would be obliged to keep them a reasonable time, the same as a railroad company is obliged to keep goods a reasonable time after they arrive at the terminus, in order that the charges may be paid & the goods taken away; so that, as I have already instructed you, the defendant, by its contract, agreed to transport these two lots of cattle to Philadelphia and deliver them to the order of Paris Myrick there, and to notify J. and W. Blaker; and it being admitted, or at least not disputed, that Myrick had duly assigned and delivered the receipt given him by the defendant, The Commercial National Bank, to secure the advance of money, and if you are satisfied from the proof that the railroad companies in the route who transported the cattle to

95 Philadelphia delivered them to the drove yard company mentioned in the proofs, and that the persons in charge of the said drove yard did on the day after the arrival of each of the said lots of cattle deliver them to J. and W. Blaker without the order of Myrick, and that The Commercial National Bank of this city thereby lost the said cattle, or the benefit of them, or the proceeds thereof, then the defendant is liable to the plaintiff in this action, it being a part of the duty of the defendant, if it or its agent, the railroad company at the terminus, delivered the cattle to the drove yard company, to accompany the cattle with the proper directions for their being delivered only to the order of Myrick, and if the railroad company failed to properly direct the drove yard company, or if they had been properly directed and the drove yard company had delivered them improperly, then the defendant, in either event, would be liable."

Also to that portion which states:

"It makes no difference whether the North Penn. Railroad Company, who made the delivery to the drove yard company, made the mistake, or whether the drove yard company made the mistake, and delivered the property wrongfully. In either event the defendant is liable, as both these parties were agencies by which the defendant undertook to complete its contract."

Also to that portion which states:

96 "It is contended by the defendant that by the course of business growing out of a series of shipments by the plaintiff over the defendant's line to the same destination, a usage had grown up to deliver the cattle to the Blakers upon substantially such contracts as this, and upon this point I say to you the parties to a contract may, by a usage, change the mode of delivery, yet, in order to warrant a delivery contrary to the terms of the contract, it must appear satisfactorily, from the evidence, that the plaintiff knew that the terms had been changed at the terminus; and that in this case, if you believe from the evidence that the plaintiff assigned his bill of lading or receipt to The Commercial National Bank as security for a loan or advance of money, then no mere usage between the plaintiff and the defendant in that regard contrary to the terms of the contract would affect the rights of the bank as the holder of this bill of lading; that is to say, the bank had the right to have the contract executed according to its terms, unless the proof shows to your satisfaction that the bank had become cognizant of a usage by which the terms were changed, and acquiesced therein."

Also to that portion which states:

"There is no safe basis to adopt in attempting to estimate what Myrick's interest was in the cattle, growing out of his right to this draw-
97 back, and I therefore direct you to exclude that from your consideration, and simply give, as damages in this case, if you are satisfied from the instructions that I have given that the plaintiff is entitled to recover, the amount of these two drafts, with interest thereon at six per cent. from the time the cattle were wrongfully disposed of, which was in one case, by the undisputed testimony, the 12th of November, 1877, and in the other the 19th of November, the cattle having arrived in Philadelphia on Sunday in each case, and having been disposed of on the following Monday."

The defendant, at the time of giving said charge, and before the jury had

retired, requested the court to give the following instructions to the jury and to incorporate the same in the charge, to wit:

98 UNITED STATES OF AMERICA,
Northern District of Illinois:

In the circuit court of the United States for the northern district of Illinois.

PARIS MYRICK, FOR USE, ETC.,
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY.

The defendant request the court to instruct the jury as follows:

1. The jury are instructed that under the pleadings and evidence in this case the plaintiff is not entitled to recover, and their verdict should be for the defendant.

2. If the jury believe from the evidence that the defendant's line terminated at Detroit, Michigan, and that the cattle in question were there delivered by the defendant to the next connecting carrier to be forwarded in the due course of business to the place of consignment, then the plaintiff is not entitled to recover, and their verdict should be for the defendant.

99 3. If the jury believe from the evidence that the defendant's line of railway terminated at Detroit, Michigan, the jury are instructed that in the absence of a special contract the law does not imply a contract to carry beyond its own line when freight so consigned is received by it for transportation, and the burden of proof is on the plaintiff to establish such special contract, and although the jury should believe from the evidence that the cattle in question were received by the defendant consigned to Philadelphia, Pennsylvania, and that a through rate of freight to the place of consignment was agreed upon, these facts alone do not establish a contract to carry through, and, in the absence of other evidence of such a contract, their verdict should be for the defendant.

4. If the jury believe from the evidence that the bills of lading or receipts sued on in this case were in the form usually given to the plaintiff, and that similar bill of lading had been received by him in making former shipments, and that from the course of dealings and other facts

100 shown in evidence, the plaintiff knew of the printed rules on the back of the bills of lading or receipts sued on, the law presumes that he had knowledge of the contents and terms of such rules and regulations, and their verdict should be for the defendant.

6. The jury are instructed that the defendant is sued in this case as a common carrier, and if the cattle in question were delivered at Philadelphia by the defendant and its connecting lines of railway, and there delivered (for the consignee) to the North Philadelphia Drove Yard Company, and that said North Philadelphia Drove Yard Company was a distinct organization; that it was the usual and established custom of business to deliver cattle so transported to said drove yard company immediately upon their arrival, to be by them kept and fed for the consignee, and that said custom of business was known to the plaintiff from the previous course of dealings between the parties, then the defendant fulfilled its contract by such delivery and the plaintiff is not entitled to recover.

7. If the jury believe from the evidence that the North Pennsylvania Railroad Company had no yard or other place for keeping and feed-

101 ing live stock transported by it, and that the necessities and nature of the business of transporting live stock were such as to require immediate delivery of such stock to the North Philadelphia Drove Yard Company on their arrival in Philadelphia, and that these facts were known, or, from the nature of the business or the previous course of dealings between the parties, ought to have been known to the plaintiff, and that the said North Pennsylvania Railroad Company, acting for the defendant, delivered said cattle to said North Philadelphia Drove Yard Company for the consignee in said bills of lading, then the liability of the defendant as common carrier was terminated, and the plaintiff is not entitled to recover.

8. The jury are instructed that the defendant was only required by its contract with the plaintiff to deliver the cattle in question at Philadelphia according to the (lawful and) established usages of the business of transporting live stock, and if the jury believe from the evidence that said cattle was so delivered at Philadelphia, Pennsylvania, then the plaint-

102 iff cannot recover, and their verdict should be for the defendant.

9. If the jury believe from the evidence that there had been a long course of previous dealings between the plaintiff and the defendant in which live stock had been transported to Philadelphia, Pennsylvania, under similar contracts to those sued on in this case, and that under such contracts it had been the usual and established custom of business to deliver said cattle to J. and W. Blaker as the persons entitled to receive the same; and that such course of business had been acquiesced in by the plaintiff, and that the cattle in question were delivered to J. and W. Blaker in accordance with such course of business, plaintiff is not entitled to recover, and the verdict should be for the defendant.

10. If the jury believe from the evidence that there had been a long course of dealings between the plaintiff and the defendant in which live stock had been received by the defendant from time to time to be transported to Philadelphia, Pennsylvania, under similar contracts to those sued on, and if they further believe from the evidence as to such course

103 of dealings and the nature of the business of transporting live stock, and the relations between the plaintiff and J. & W. Blaker, that said plaintiff expected and intended that said live stock would be delivered to J. & W. Blaker immediately upon their arrival at Philadelphia, and without waiting for said bills of lading, then the defendant had a right to deliver said cattle to said J. & W. Blaker, and the jury should find for the defendant.

11. If the jury believe from the evidence and the previous course of dealings between the plaintiff, The Commercial Nation' Bank, and J. & W. Blaker that it was the intention and understanding of said plaintiff, said bank, and the said Blakers that the drafts in evidence should be paid out of the proceeds of the cattle referred to in the bills of lading sued on, and that said Blakers had a right to receive and sell said cattle to pay said drafts, then the plaintiff cannot recover, and their verdict should be for the defendant.

12. If the jury believe from the evidence that under the instructions of the court that the cattle in question were owned by J. and W.

104 Blaker at the time the same were delivered to them subject only to a right on the part of the plaintiff and The Commercial National Bank to have the drafts in evidence paid out of the proceeds of the sale

of the same, then the defendant had the right to deliver said cattle to the said J. & W. Blaker, and the plaintiff cannot recover.

13. In determining whether under the arrangements and understanding between the said Blakers, said Commercial National Bank, and the plaintiff, the said Blakers had a right to receive and dispose of the cattle in question for the purpose of paying the drafts in evidence, the jury have a right to consider the previous course of dealings and the acts and declarations of the parties, and any other evidence which tends to show their understanding of the purpose of drawing said drafts and transferring said bills of lading.

14. In determining the evidence and under the instructions given by the court whether the cattle in question were duly delivered by the defendant the jury may consider the established and known usages of
105 the business of the transportation of cattle and the nature and necessities of such business, the previous course of dealings or usage of business between the plaintiff and defendant, and any other facts and circumstances given in evidence tending to show how or to whom the defendant was to deliver said cattle under its contract with the plaintiff.

15. If the jury believe from the evidence that it was the object and intention of the plaintiff, in requiring notice of the arrival of the cattle in question to be given to J. & W. Blaker, to inform the said Blakers of the arrival of said cattle for the purpose of enabling them to receive said cattle from the defendant or its agent and care for the same, and that it was not the intention or understanding of the plaintiff that said cattle should be held by the defendant or its agent until presentation of said bills of lading, but that the same should be at once delivered to said Blakers, then the plaintiff cannot recover, and the verdict should be for the defendant.

106 16. If the jury believe from the evidence that at the time the bills of lading in suit were issued it was the custom to deliver cattle named in the bills of lading to the consignee or owner thereof without requiring the bills of lading; that such custom was generally known and acquiesced in, and that the said J. & W. Blaker were the owners of the cattle in question, then the delivery of said cattle to said Blakers was a good delivery, and the plaintiff cannot recover.

17. If the jury believe from the evidence that there had been a previous course of dealings between the plaintiff and the defendant, in which cattle had been shipped by the plaintiff, consigned to his order and requiring notice to J. & W. Blaker, and that it had been the practice and usage of the defendant to deliver cattle so consigned to said J. & W. Blaker without the presentation of bills of lading, then the cattle shipped on the 7th and 14th of November, 1877, were properly delivered, and the plaintiff cannot recover.

18. If the jury believe from the evidence that The Commercial
107 National Bank of Chicago knew of and acquiesced in the delivery of the cattle to J. & W. Blaker, upon similar shipments made to the order of Paris Myrick, without the presentation of bills of lading, then the cattle shipped on the 7th and 14th of November, 1877, were properly delivered, and the plaintiff cannot recover.

19. If the jury believe from the evidence that The Commercial National Bank of Chicago trusted J. & W. Blaker to pay the drafts accompanying the bills of lading of November 7th & 14th, 1877, and did not protest said

drafts or notify the North Pennsylvania Railroad Company of the outstanding drafts and bills of lading, then said bank was guilty of negligence as to these drafts and bills of lading, and the jury should find for the defendant.

20. If the jury believe from the evidence that The Commercial National Bank of Chicago, by its agent, the First National Bank of Newton, trusted J. & W. Blaker to pay for the cattle shipped to them, and retained the drafts and bills of lading of November 7th & 14th, 1877, without notifying the North Pennsylvania Railroad Company that it held the same, the said Commercial National was guilty of negligence, and the verdict should be for the defendant.

108 21. It was the duty of the First National Bank of Newton, as the agent of The Commercial National Bank of Chicago, to protest the drafts immediately upon their presentation and non-payment, and to notify the North Pennsylvania Railroad Company that it held said bills of lading, and it having failed to do so, plaintiff was guilty of negligence, and cannot recover.

22. If the jury believe from the evidence that former shipments of cattle were made by Paris Myrick on account of J. & W. Blaker, and paid for by loans made by Commercial National Bank; that said cattle were shipped upon the same terms as the cattle in question, and were delivered on arrival in Philadelphia to J. & W. Blaker without presentation of or notice to the North Pennsylvania Railroad Company of any outstanding bills of lading; that said J. & W. Blaker sold the cattle so shipped, and with the proceeds of such sales pay the drafts accompanying the bills of lading; that said Commercial National Bank of Chicago knew of and acquies'ed in such an arrangement, then, in case of the refusal by the

109 said J. & W. Blaker to pay the drafts in evidence, the defendant cannot be held liable for delivering the cattle named in the bills of lading in suit to said J. & W. Blaker.

23. If the jury believe from the evidence that former shipments of cattle were made by Paris Myrick on account of J. & W. Blaker, and paid for by loans made by The Commercial National Bank of Chicago; that said cattle were delivered on arrival in Philadelphia to J. & W. Blaker without the presentation of or notice of the North Pennsylvania Railroad Company of any outstanding bills of lading; that said J. & W. Blaker sold said cattle, and with the proceeds of the sales paid the drafts accompanying the bills of lading, and that The Commercial National Bank of Chicago, by their agent, the First National Bank of Newton, knew of and acquies'ed in such an arrangement, The Commercial National Bank is bound thereby, and in case of the refusal by J. & W. Blaker to pay the drafts in suit the plaintiff cannot recover, and the jury should find for the defendant.

110 All of which instructions the court refused to give, to which refusal to give said instructions and each of them as asked the defendant then and there excepted. And thereupon, the jury having retired and returned a verdict for the plaintiff, the defendant moved for a new trial, which was overruled, and judgment entered upon the verdict for the plaintiff, to which the defendants then and there excepted. And forasmuch as the foregoing facts do not appear of record, the said defendant prays that this his bill of exceptions, be signed and sealed by the court, and made a part of the record, which is accordingly done.

H. W. BLODGETT, *Judge*. [SEAL.]

(Endorsed:) Filed May 2, 1879. Wm. H. Bradley, clerk.

111 And afterwards, to wit, on the 12th day of May, A. D. 1879, said defendant, The Michigan Central Railroad Company, filed in said clerk's office its bond in said entitled cause, which said bond is in the words and figures following, to wit:

Bond.

Circuit court of the United States for the northern district of Illinois.

PARIS MYRICK, USE OF THE COMMERCIAL NATIONAL BANK OF CHICAGO,
v.
THE MICHIGAN CENTRAL RAILROAD COMPANY.

Know all men by these presents that we, The Michigan Central Railroad Company, The North Pennsylvania Railroad Company of the State of Pennsylvania, William H. Vanderbilt, of the city, county, and State of New York, are held and firmly bound unto Paris Myrick, for the use of The Commercial National Bank of Chicago, of Cook County, State of Illinois, in the sum of forty thousand (40,000) dollars, to be paid to the said Paris Myrick, his executors or administrators, for the use of the said The Commercial National Bank of Chicago, its successors or assigns, to

112 which payment we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, administrators, successors, and assigns, firmly held by these presents.

In witness whereof the said corporations have caused these presents to be sealed with their corporate seals and signed by their presidents and the other obligor by hand and seal this eighth day of May, A. D. 1879.

Whereas the above-named The Michigan Central Railroad Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named The Michigan Central Railroad Company shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

W. H. VANDERBILT. [SEAL.]
THE MICHIGAN CENTRAL RAILROAD CO.,
[SEAL.] By W. H. VANDERBILT, *President.*

Attest:
E. D. WORCESTER, *Sec'y.*

113 NORTH PENNSYLVANIA RAILROAD CO.,
[SEAL.] By E. C. KNIGHT, *Prest. pro tem.*
J. S. WISE, *Sec'y.*

Approved.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed May 12, 1879. Wm. H. Bradley, cl'k.

114 NORTHERN DISTRICT OF ILLINOIS, *sct:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Paris Myrick, for the use of The Commercial National Bank of Chicago, was the plaintiff and The Michigan Central Railroad Company was the defendant, as appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 14th day of October, A. D. 1879, and of our Independence the 104th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

115 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between Paris Myrick, for use of The Commercial National Bank of Chicago, and The Michigan Central Railroad Company in an action of assumpsit, a manifest error hath happened, to the great damage of the said The Michigan Central Railroad Company, as by its complaint appears, and it is being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1879, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this sixth day of May, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the 103d year.

[SEAL] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Supreme Court of the United States. Michigan Central Railroad Company vs. Paris Myrick, use of, &c. Writ of error.

116 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To Paris Myrick, use of Commercial National Bank of Chicago, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1879, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein The Michigan Central Railroad Company is

plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

H. W. BLODGETT,
Judge.

117 We hereby accept service of the within citation this 13th day of May, A. D. 1879, by copy.

E. C. & W. C. LARNED,
Attorneys for Defendants in Error.

(Indorsed:) Supreme Court of the United States. The Michigan Central Railroad Comp'y vs. Paris Myrick, use of Commercial National Bank of Chicago. Citation to October term, A. D. 1879. May 13, 1879.

(Indorsement on cover:) No. 123. The Michigan Central Railroad Company, plaintiff in error, vs. Paris Myrick, for use of The Commercial National Bank of Chicago. N. Illinois C. C. U. S. Filed 23rd October, 1879.

ADDITION TO RECORD 123.

Supreme Court of the United States.

THE MICHIGAN CENTRAL RAILROAD COMPANY, plaintiff in error,
vs.
PARIS MYRICK, FOR THE USE OF THE COMMERCIAL NATIONAL BANK of Chicago.
No. 123.

Stipulation of counsel and addition to record.—Filed August 21, 1882.

1 United States circuit court, northern district of Illinois.

FRIDAY, *May 2d, A. D.* 1879.

Present, Hon. Henry W. Blodgett, district judge.

PARIS MYRICK, FOR USE OF THE COMMERCIAL National Bank of Chicago,
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY.
No. 15410. Assumpsit.

Now comes the defendant, by its attorney, and the motion of the defendant heretofore entered herein for a new trial of this cause now coming on to be heard, after hearing said attorney the court overrules said motion and awards judgment.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of twenty-six thousand four hundred and fifty-one dollars and twenty-two cents, his damages so as aforesaid assessed, together with his costs and charges in this behalf expended, amounting to the sum of eighty-nine dollars and seventy-one cents, and that he have execution therefor.

2 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, Wm. H. Bradley, clerk of the circuit court of the United States for said northern district, do hereby certify the foregoing to be a true, full, and perfect copy of the judgment entered against the defendant in the case of Paris Myrick, for use of the Commercial National Bank of Chicago, against the Michigan Central Railroad Company, in said court on the second day of May, A. D. 1879, as the same appears from the original record now in my custody. And I do further certify that in a printed record this day submitted for my inspection, purporting to be a copy of the record certified by the undersigned on the 14th day of October, A. D. 1879, and filed in the Supreme Court of the United States on the 23d day of October, 1879, under a writ of error sued out by the defendant

in said foregoing-entitled case, and numbered in said Supreme Court 123, on page seventeen of said printed record, the judgment therein recited is erroneous, and is not a true and correct copy of the judgment actually entered of record in said circuit court in said entitled case; but that the judgment, a copy of which precedes this certificate, is, as it purports to be,

a true and correct copy of the said original entry of the judgment
3 so entered in said court on said second day of May, A. D. 1879.

In testimony whereof I have hereunto set my hand and official seal, at my office in Chicago, in said northern district, this 16th day of August, A. D. 1882.

[SEAL.] WM. H. BRADLEY, *Clerk.*

4 In the Supreme Court of the United States.

MICHIGAN CENTRAL RAILROAD COMPANY, plaintiff in error,
vs.
PARIS MYRICK, FOR USE OF, ETC., DEFENDANT in error.

Error of circuit court of U. S., northern district of Illinois.

It is hereby admitted that the above and foregoing certificate, signed by William H. Bradley, clerk of the circuit court for the northern district of Illinois, is correct, and that the judgment of record in the circuit court of the said northern district of Illinois in the said suit is as stated in said certificate.

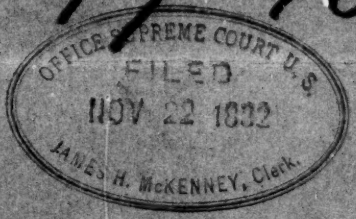
It is further stipulated that the said foregoing certificate of the said clerk and copy of judgment may be printed and attached to the transcript of record in the above-entitled cause, and be considered in all respects as a part thereof, and be considered as though inserted in place of the er'oneous transcript of judgment contained upon page 17 of the printed record in said cause.

Aug. 19, 1882.

WIRT DEXTER,
For Pl't'ff in Error,
E. C. & W. C. LARNED,
Att'ys for Def'd't in Error.

(Indorsed:) No. 123. Supreme Court of U. S. Oct. term, 1882. No. 123. Michigan Central Railroad Co., pl't'ff in error, vs. Paris Myrick, for use Commercial National Bank of Chicago. Stipulation of counsel and addition to record. Filed 21 Aug., 1882. Office Supreme Court U. S. Filed Aug. 21, 1882. James H. McKenney, clerk.

17-102



Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 123.

MICHIGAN CENTRAL RAILROAD COMPANY,
Plaintiff in Error,

vs.

PARIS MYRICK, for the use of THE COMMERCIAL NATIONAL BANK OF CHICAGO.

BRIEF FOR THE PLAINTIFF IN ERROR.

GEO. F. EDMUNDS,
Of Counsel for Plaintiff in Error.

Thomas McGill & Co., Law Printers, Washington, D. C.

Supreme Court of the United States.

October Term, 1882.

MICHIGAN CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

v.

PARIS MYRICK, FOR THE USE OF THE COMMERCIAL NATIONAL BANK OF CHICAGO.

No. 123.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The railroad is a corporation of the State of Michigan, its line extending from Chicago, just over the border on the west, to Detroit on the Detroit River, the eastern shore of the State of Michigan.

The company was a common carrier of goods, live stock, &c.

For some time previous to November 7, 1877, Myrick, the plaintiff below, had been buying cattle in Chicago and shipping them, (each road collecting its own freight, &c., from the next one,) via the defendant's road and other roads connecting—the last of which was the Northern Pennsylvania road—to Philadelphia, and addressed, "Con-

signed to order of Paris Myrick, (notify J. & W. Blaker, Philadelphia, Pa.)" That the persons who received and disposed of the cattle for him or for themselves, if Myrick was their agent, as there was testimony tending to show, were J. & W. Blaker. That on making these shipments Myrick was accustomed to make drafts on the Blakers through the Commercial Bank of Chicago, and to endorse the defendant's receipt for the cattle in blank and leave it with the bank as security for the drafts. These receipts contained a clause that they *might* be exchanged for a through bill of lading, but they never were. That the cattle so shipped arrived in Philadelphia in due course in about four days after shipment, and were, according to the uniform custom and course of business, at once turned over by the Northern Pennsylvania Railroad Company to the drove yard, a company formed for and exercising the functions of receiving all the cattle arriving at North Philadelphia, and caring for them and delivering them to the proper parties, consignees, &c. That the yard company notified the Blakers and delivered these various shipments of cattle, (neither Myrick nor the bank ever appearing to examine them,) preceding the ones in question, to the Blakers without the production or delivery of the carrier's receipt so given at the time of shipment. That all the drafts so previously drawn were paid in due course—generally after the cattle had reached the hands of the Blakers—and reported as so paid in about 10 to 14 days after the shipments, and, so far as appears, the drove yard company were not informed that money had been raised on such shipments, and never had any carrier's receipts, &c., furnished to them as vouchers of the right of the Blakers to take the cattle and pay the freights. That none of the freights were paid in advance, and no undertaking on the part of the defendants below to carry the cattle at all appeared, other than its line began at Chicago and ended at Detroit, and the carrier's receipt, substantially alike in all the cases, hereinafter set forth. That in this

state of business Myrick, on the 7th of November, 1877, shipped from the station of the company of the plaintiff in error at Chicago 202 cattle, and took a receipt, like all its predecessors therefor, in the words and figures following:

"MICHIGAN CENTRAL RAILROAD COMPANY,
"*Chicago Station, November 7th*, 1877.

"Received from Paris Myrick, in apparent good order, consigned order Paris Myrick (notify J. & W. Blaker, Philadelphia, Pa.):

Articles.	Weight or measure.
"Two hundred and two (202) cattle	240,000

"Advanced charges $12.00. Marked and described as above (contents and value otherwise unknown) for transportation by the Michigan Central Railroad Company to the warehouse at ———

"WM. GEAGAN, Agent."

[On margin:] "This company will not hold itself responsible for the accuracy of these weights as between buyer and seller, the approximate weight having been ascertained by track-scales, which is sufficiently accurate for freighting purposes, but may not be strictly correct as between buyer and seller. This receipt can be exchanged for a through bill of lading.

"*Notice.*—See rules of transportation on the back hereof. Use separate receipts for each consignment."

On the back of said receipt or bill of lading was also printed the following notice:

* * * * * * * *

"Goods or property consigned to any place off the company's line of road, or to any point or place beyond the termini, will be sent forward by a carrier or freightman, when there are such, in the usual manner; the company acting for the purpose of delivering to such carrier as the agent of the consignor or consignee, and not as carriers. The company will not be liable or responsible for any loss, damage, or injury to the property after the

same shall have been sent from any warehouse or station of the company.

"[Endorsed:] Paris Myrick.

"[Erased:] Cattle within named were delivered to North Philadelphia Stock Yard."

Following this, on the back of the two receipts in question, is the endorsement in blank, "Paris Myrick."

And on the 14th November, 1877, another shipment in precisely the same way took place. That in all these cases a person employed by Myrick for the purpose accompanied the lots of cattle so shipped, in charge of the same, from the beginning of the shipment to their final delivery to the Blakers. That on these two shipments of November 7 and 14, Myrick drew on the Blakers, as he had done before, for money to an amount substantially equivalent to the shipment and in favor of the Commercial Bank, and delivered to the bank the before described railroad receipts for the cattle.

That the plaintiff in error in all these instances duly carried the cattle to the eastern end of its line at Detroit, and there delivered them to the next carrier, and the next carrier did the same, and so on until the cattle arrived in Philadelphia and were delivered to the drove yard company four days after each shipment, which company notified Blaker of arrival, and, without the production of the transportation receipt given by plaintiff in error, delivered the cattle according to the previous custom to the Blakers, without any knowledge or information of any outstanding claim or pretension in regard thereto. That the drafts drawn in regard to these two shipments of November 7 and 14 did not appear at Philadelphia for acceptance or payment until on or after the 19th of the same month, being a period, in the first instance, of eight days, and in the second instance of three days, after the cattle had arrived, and, in the usual and necessary course of business, had been delivered to the drove yard company, and by

them innocently turned over to the Blakers, whom the carrier's receipt and the way-bills mentioned as the persons to be notified of arrival. That the Blakers did not accept or pay the drafts drawn on them on these last two occasions, and so the bank did not realize on the drafts, and Myrick, who had endorsed the receipts and delivered them to the bank, and who had not paid the bank or taken up the receipts, sues.

Under the instruction of the court below, holding that these receipts were in point of law contracts of the defendant below to carry the cattle to Philadelphia, and there deliver them to the order of Myrick, and that they had not done this, the jury found for Myrick—there being really no substantial question left open to its consideration; and this writ of error is brought to review that decision.

Assignments of Error.

I.

That the court refused severally each and every one of the requests of the defendant below to charge the jury as such requests appear in the record, folios 98 to 109 inclusive, which several requests are in the words and figures following; and such refusal to charge is now assigned for error as it respects each one of said requests severally:

"The defendant requests the court to instruct the jury as follows:

"1. The jury are instructed that under the pleadings and evidence in this case the plaintiff is not entitled to recover, and their verdict should be for the defendant.

"2. If the jury believe from the evidence that the defendant's line terminated at Detroit, Michigan, and that the cattle in question were there delivered by the defendant to the next connecting carrier to be forwarded in the due course of business to the place of consignment, then the

same shall have been sent from any warehouse or station of the company.

"[Endorsed:] Paris Myrick.

"[Erased:] Cattle within named were delivered to North Philadelphia Stock Yard."

Following this, on the back of the two receipts in question, is the endorsement in blank, "Paris Myrick."

And on the 14th November, 1877, another shipment in precisely the same way took place. That in all these cases a person employed by Myrick for the purpose accompanied the lots of cattle so shipped, in charge of the same, from the beginning of the shipment to their final delivery to the Blakers. That on these two shipments of November 7 and 14, Myrick drew on the Blakers, as he had done before, for money to an amount substantially equivalent to the shipment and in favor of the Commercial Bank, and delivered to the bank the before described railroad receipts for the cattle.

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them innocently turned over to the Blakers, whom the carrier's receipt and the way-bills mentioned as the persons to be notified of arrival. That the Blakers did not accept or pay the drafts drawn on them on these last two occasions, and so the bank did not realize on the drafts, and Myrick, who had endorsed the receipts and delivered them to the bank, and who had not paid the bank or taken up the receipts, sues.

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Assignments of Error.

I.

That the court refused severally each and every one of the requests of the defendant below to charge the jury as such requests appear in the record, folios 98 to 109 inclusive, which several requests are in the words and figures following; and such refusal to charge is now assigned for error as it respects each one of said requests severally:

"The defendant requests the court to instruct the jury as follows:

"1. The jury are instructed that under the pleadings and evidence in this case the plaintiff is not entitled to recover, and their verdict should be for the defendant.

"2. If the jury believe from the evidence that the defendant's line terminated at Detroit, Michigan, and that the cattle in question were there delivered by the defendant to the next connecting carrier to be forwarded in the due course of business to the place of consignment, then the

plaintiff is not entitled to recover, and their verdict should be for the defendant.

"3. If the jury believe from the evidence that the defendant's line of railway terminated at Detroit,
99 Michigan, the jury are instructed that in the absence of a special contract the law does not imply a contract to carry beyond its own line when freight so consigned is received by it for transportation, and the burden of proof is on the plaintiff to establish such special contract, and although the jury should believe from the evidence that the cattle in question were received by the defendant, consigned to Philadelphia, Pennsylvania, and that a through rate of freight to the place of consignment was agreed upon, these facts alone do not establish a contract to carry through, and, in the absence of other evidence of such a contract, their verdict should be for the defendant.

"4. If the jury believe from the evidence that the bills of lading or receipts sued on in this case were in the form usually given to the plaintiff, and that similar bills of lading had been received by him in making former shipments, and that from the course of dealings, and from other facts shown in evidence, the plaintiff knew of the printed
100 rules on the back of the bills of lading or receipts sued on, the law presumes that he had knowledge of the contents and terms of such rules and regulations, and their verdict should be for the defendant.

"5. The jury are instructed that the defendant is sued in this case as a common carrier, and if the cattle in question were delivered at Philadelphia by the defendant and its connecting lines of railway, and there delivered (for the consignee) to the North Philadelphia Drove Yard Company, and that said North Philadelphia Drove Yard Company was a distinct organization; that it was the usual and established custom of business to deliver cattle so transported to said drove yard company immediately upon their arrival, to be by them kept and fed for the consignee, and that said custom of business was known to the plaintiff from the previous course of dealing between the parties, then the defendant fulfilled its contract by such delivery and the plaintiff is not entitled to recover.

"6. If the jury believe from the evidence that the North Pennsylvania Railroad Company had no yard or other

place for keeping and feeding live stock transported by it, and that the necessities and nature of the business of
101 transporting live stock were such as to require immediate delivery of such stock to the North Philadelphia Drove Yard Company on their arrival in Philadelphia, and that these facts were known, or, from the nature of the business or the previous course of dealings between the parties, ought to have been known to the plaintiff, and that the said North Pennsylvania Railroad Company, acting for the defendant, delivered said cattle to said North Philadelphia Drove Yard Company for the consignee in said bills of lading, then the liability of the defendant as common carrier was terminated, and the plaintiff is not entitled to recover.

"7. The jury are instructed that the defendant was only required by its contract with the plaintiff to deliver the cattle in question at Philadelphia according to the (lawful and) established usages of the business of transporting live stock, and if the jury believe from the evidence that said cattle were so delivered at Philadelphia, Pennsyl-
102 vania, then the plaintiff cannot recover, and their verdict should be for the defendant.

"8. If the jury believe from the evidence that there had been a long course of previous dealing between the plaintiff and the defendant in which live stock had been transported to Philadelphia, Pennsylvania, under similar contracts to those sued on in this case, and that under such contracts it had been the usual and established custom of business to deliver said cattle to J. & W. Blaker as the persons entitled to receive the same; and that such course of business had been acquiesced in by the plaintiff, and that the cattle in question were delivered to J. & W. Blaker in accordance with such course of business, plaintiff is not entitled to recover, and the verdict should be for the defendant.

"9. If the jury believe from the evidence that there had been a long course of dealings between the plaintiff and the defendant in which live stock had been received by the defendant from time to time to be transported to Philadelphia, Pennsylvania, under similar contracts to those sued on, and if they further believe from the evidence as to such course of dealings and the nature of the busi-
103 ness of transporting live stock, and the relations be-

tween the plaintiff and J. & W. Blaker, that said plaintiff expected and intended that said live stock would be delivered to J. & W. Blaker immediately upon their arrival at Philadelphia, and without waiting for said bills of lading, then the defendant had a right to deliver said cattle to said J. & W. Blaker, and the jury should find for the defendant.

"10. If the jury believe from the evidence and the previous course of dealings between the plaintiff, the Commercial National Bank, and J. & W. Blaker that it was the intention and understanding of said plaintiff, said bank, and the said Blakers that the drafts in evidence should be paid out of the proceeds of the cattle referred to in the bills of lading sued on, and that said Blakers had a right to receive and sell said cattle to pay said drafts, then the plaintiff cannot recover, and the verdict should be for the defendant."

"11. If the jury believe from the evidence that under the instructions of the court that the cattle in question were owned by J. & W. Blaker, at the time the same were
104 delivered to them, subject only to a right on the part of the plaintiff and the Commercial National Bank to have the drafts in evidence paid out of the proceeds of the sale of the same, then the defendant had the right to deliver said cattle to the said J. &. W. Blaker, and the plaintiff cannot recover.

"12. In determining whether under the arrangements and understanding between the said Blakers, said Commercial National Bank, and the plaintiff, the said Blakers had a right to receive and dispose of the cattle in question for the purpose of paying the drafts in evidence, the jury have a right to consider the previous course of dealings and the acts and declarations of the parties, and any other evidence which tends to show their understanding of the purpose of drawing said drafts and transferring said bills of lading.

"13. In determining the evidence and under the instructions given by the court whether the cattle in question were duly delivered by the defendant the jury may con-
105 sider the established and known usages of the business of the transportation of cattle and the nature and necessities of such business, the previous course of dealings or usage of business between the plaintiff and defendant, and any other facts and circumstances given in

evidence tending to show how or to whom the defendant was to deliver said cattle under its contract with the plaintiff.

"14. If the jury believe from the evidence that it was the object and intention of the plaintiff, in requiring notice of the arrival of the cattle in question to be given to J. & W. Blaker, to inform the said Blakers of the arrival of said cattle for the purpose of enabling them to receive said cattle from the defendant or its agent and care for the same, and that it was not the intention or understanding of the plaintiff that said cattle should be held by the defendant or its agent until presentation of said bills of lading, but that the same should be at once delivered to said Blakers, then the plaintiff cannot recover, and the verdict should be for the defendant.

106 "15. If the jury believe from the evidence that at the time the bills of lading in suit were issued it was the custom to deliver cattle named in the bills of lading to the consignee or owner thereof without requiring the bills of lading; that such custom was generally known and acquiesced in, and that the said J. & W. Blaker were the owners of the cattle in question, then the delivery of said cattle to said Blakers was a good delivery, and the plaintiff cannot recover.

"16. If the jury believe from the evidence that there had been a previous course of dealings between the plaintiff and the defendant, in which cattle had been shipped by the plaintiff, consigned to his order and requiring notice to J. & W. Blaker, and that it had been the practice and usage of the defendant to deliver cattle so consigned to said J. & W. Blaker without the presentation of bills of lading, then the cattle shipped on the 7th and 14th of November, 1877, were properly delivered, and the plaintiff cannot recover.

107 "17. If the jury believe from the evidence that the Commercial National Bank of Chicago knew of and acquiesced in the delivery of the cattle to J. & W. Blaker, upon similar shipments made to the order of Paris Myrick, without the presentation of bills of lading, then the cattle shipped on the 7th and 14th of November, 1877, were properly delivered, and the plaintiff cannot recover.

"18. If the jury believe from the evidence that the Commercial National Bank of Chicago trusted J. & W. Blaker

to pay the drafts accompanying the bills of lading of November 7th and 14th, 1877, and did not protest said drafts or notify the North Pennsylvania Railroad Company of the outstanding drafts and bills of lading, then said bank was guilty of negligence as to these drafts and bills of lading, and the jury should find for the defendant.

"19. If the jury believe from the evidence that the Commercial National Bank of Chicago, by its agent, the First National Bank of Newton, trusted J. & W. Blaker to pay for the cattle shipped to them, and retained the drafts and bills of lading of November 7th and 14th, 1877, without notifying the North Pennsylvania Railroad Company that it held the same, the said Commercial National Bank was guilty of negligence, and the verdict should be for the defendant.

108 "20. It was the duty of the First National Bank of Newton, as the agent of the Commercial National Bank of Chicago, to protest the drafts immediately upon their presentation and non-payment, and to notify the North Pennsylvania Railroad Company that it held said bills of lading, and it having failed to do so, plaintiff was guilty of negligence, and cannot recover.

"21. If the jury believe from the evidence that former shipments of cattle were made by Paris Myrick on account of J. & W. Blaker, and paid for by loans made by Commercial National Bank; that said cattle were shipped upon the same terms as the cattle in question, and were delivered on arrival in Philadelphia to J. & W. Blaker without presentation of or notice to the North Pennsylvania Railroad Company of any outstanding bills of lading; that said J. & W. Blaker sold the cattle so shipped, and with the proceeds of such sales pay the drafts accompanying the bills of lading; that said Commercial National Bank of Chicago knew of and acquiesced in such an arrangement,

109 then, in case of the refusal by the said J. & W. Blaker to pay the drafts in evidence, the defendant cannot be held liable for delivering the cattle named in the bills of lading in suit to said J. & W. Blaker.

"22. If the jury believe from the evidence that former shipments of cattle were made by Paris Myrick on account of J. & W. Blaker, and paid for by loans made by the Commercial National Bank of Chicago; that said cattle were delivered on arrival in Philadelphia to J. & W. Blaker

without the presentation of or notice of the North Pennsylvania Railroad Company of any outstanding bills of lading; that said J. & W. Blaker sold said cattle, and with the proceeds of the sales paid the drafts accompanying the bills of lading, and that the Commercial National Bank of Chicago, by their agent, the First National Bank of Newton, knew of and acquiesced in such an arrangement, the Commercial National Bank is bound thereby, and in case of the refusal by J. & W. Blaker to pay the drafts in suit the plaintiff cannot recover, and the jury should find for the defendant."

II.

That the court below was in error in charging the jury in respect of each of the several declarations and instructions stated by the court to the jury, and appearing in the record in folios 91 to 97 inclusive, and was in error as it respects all of them taken together; and such several declarations and instructions are in the words and figures following:

"Considerable discussion has been had before the court upon questions of law raised upon the receipts which were given to the plaintiff at the time the cattle were shipped, the question being whether these receipts were or were not a through bill of lading. I at first was inclined to submit this as a question of fact to the jury—that is, to submit all the testimony and allow the jury to say, as a question of fact, whether the defendant did, when all the testimony was considered, contract to transport these cattle
92 through to Philadelphia; but, upon further reflection, I have concluded that that is solely a question of law for the court, upon the construction of this receipt, and in the light of the testimony, which the court has the right to consider."

Also to that portion which states:

"Taking into consideration, then, the circumstances concerning the making of this bill of lading, which appears in the proof, I come to the conclusion, and so say to you,

gentlemen of the jury, that this bill of lading is a through contract, whereby the defendant agreed to transport the cattle named in this bill of lading or receipt from Chicago to Philadelphia and there deliver them to the order of Paris Myrick, and to notify J. and W. Blaker of their arrival. This was the undertaking on the part of the defendant with the plaintiff, and with whoever might be made the assignee or holder of this contract."

Also to that portion which states:

"It then became the duty of the defendant, if the defendant's road did not reach to the place of destination of the property shipped under this bill, to properly notify or inform each of the carriers beyond the defendant's own terminus of the terms upon which the shipment was made; and each of the carriers beyond the defendant's terminus is, for the purpose of executing this contract, the agent of the defendant, and as completely bound to carry
93 out the terms of the contract as if the defendant's railroad extended from here to the place of destination, and the agents of the last carrier who transported the cattle are the agents of the defendant for the purpose of executing this contract and seeing that its terms are complied with."

Also to that portion which states:

"Undoubtedly this kind of freight must have accommodations adapted to it, and railroad companies that become carriers of live stock may provide such accommodations themselves, or may adopt those provided by other independent companies or persons; but if they adopt the yards of another, they thereby make them their own for the purpose of performing their contract the same as if they were their own depots and the managers of the yards their servants and agents. As with merchandise, they are bound to provide a depot or freight-house in which the goods may be safely and properly kept and cared for until a delivery can be made to the consignee according to the terms of the shipment. For this purpose, as I have already intimated, the railroad company, as a common carrier, had a right to make this drove yard its warehouse or place for the storage of these cattle, and the drove yards were re-

quired to hold the cattle as the railroad company itself would have been compelled to hold them until the consignee called for them, or until a reasonable time
94 elapsed. The cattle being of course expensive to keep, they would be kept at the expense of the consignee, and the charges upon them would be additional charges upon them to be paid whenever they were taken away; and if they were detained an unreasonable time, then, under the law pertaining to the rights and duties of common carriers, the drove yard company would be entitled to sell the cattle as perishable property for the expenses. If there was danger of the charges upon them overrunning or nearly approaching to their value, they would not be obliged to keep them indefinitely; but they would be obliged to keep them a reasonable time, the same as a railroad company is obliged to keep goods a reasonable time after they arrive at the terminus, in order that the charges may be paid and the goods taken away; so that, as I have already instructed you, the defendant, by its contract, agreed to transport these two lots of cattle to Philadelphia and deliver them to the order of Paris Myrick there, and to notify J. & W. Blaker; and it being admitted, or at least not disputed, that Myrick had duly assigned and delivered the receipt given him by the defendant, the Commercial National Bank, to secure the advance of money, and if you are satisfied from the proof that the railroad companies in the route who transported the
95 cattle to Philadelphia delivered them to the drove yard company mentioned in the proofs, and that the persons in charge of the said drove yard did on the day after the arrival of each of the said lots of cattle deliver them to J. & W. Blaker without the order of Myrick, and that the Commercial National Bank of this city thereby lost the said cattle, or the benefit of them, or the proceeds thereof, then the defendant is liable to the plaintiff in this action, it being a part of the duty of the defendant, if it or its agent, the railroad company at the terminus, delivered the cattle to the drove yard company, to accompany the cattle with the proper directions for their being delivered only to the order of Myrick, and if the railroad company failed to properly direct the drove yard company, or if they had been properly directed and the drove yard company had delivered them improperly, then the defendant, in either event, would be liable."

Also to that portion which states:

"It makes no difference whether the North Penn. Railroad Company, who made the delivery to the drove yard company, made the mistake, or whether the drove yard company made the mistake, and delivered the property wrongfully. In either event the defendant is liable, as both these parties were agencies by which the defendant undertook to complete its contract."

Also to that portion which states:

96 "It is contended by the defendant that by the course of business growing out of a series of shipments by the plaintiff over the defendant's line to the same destination, a usage had grown up to deliver the cattle to the Blakers upon substantially such contracts as this, and upon this point I say to you the parties to a contract may, by a usage, change the mode of delivery; yet, in order to warrant a delivery contrary to the terms of the contract, it must appear satisfactorily, from the evidence, that the plaintiff knew that the terms had been changed at the terminus; and that in this case, if you believe from the evidence that the plaintiff assigned his bill of lading or receipt to the Commercial National Bank as security for a loan or advance of money, then no mere usage between the plaintiff and the defendant in that regard contrary to the terms of the contract would affect the rights of the bank as the holder of this bill of lading; that is to say, the bank had the right to have the contract executed according to its terms, unless the proof shows to your satisfaction that the bank had become cognizant of a usage by which the terms were changed, and acquiesced therein."

Also to that portion which states:

"There is no safe basis to adopt in attempting to estimate what Myrick's interest was in the cattle, growing out of his right to this drawback, and I therefore direct
97 you to exclude that from your consideration, and simply give, as damages in this case, if you are satisfied from the instructions that I have given that the plaintiff is entitled to recover, the amount of these two

drafts, with interest thereon at six per cent. from the time the cattle were wrongfully disposed of, which was in one case, by the undisputed testimony, the 12th of November, 1877, and in the other the 19th of November, the cattle having arrived in Philadelphia on Sunday in each case, and having been disposed of on the following Monday."

POINTS.

I.

The defendant was under no legal obligation to receive the property for transportation, and to transport it beyond its own line. If the plaintiff had offered the property for transportation by the company to Philadelphia, the defendant might have lawfully refused it and have said that it would undertake to transport the property only to the terminus of its own road.

II.

It follows from the preceding proposition that any duty of the defendant in regard to the property beyond its own line was a conventional one that it might undertake or refuse at its pleasure.

III.

The question, then, is whether the defendant, not being bound by its public duty to undertake anything in regard to the property in question beyond Detroit, did, as a matter of fact or law, undertake to deliver the property at Philadelphia ?

IV.

This depends upon what actually took place between the parties on the subject of the shipment.

V.

There being no common law liability to receive and transport to Philadelphia, the receipt for the property must show such an obligation, if one existed.

VI.

The face of the receipt imports no such obligation. It did not say that the property was to be transported to Philadelphia, or was received *for* transportation to that place. It says that it is "consigned order Paris Myrick (notify J. & W. Blaker, Philadelphia, Pa.;)" and then, after description of the property, says "for transportation by the Michigan Central Railroad to the warehouse at" blank; and then says, "Notice—see rules of transportation on the back hereof." And on the back of the receipt was printed, among other reasonable provisions in regard to transportation, the distinct statement that goods consigned to points beyond the company's line would be sent forward by a carrier or freightman, when there are such, in the usual manner, the company acting for that purpose as the agent of the consignor or consignee, and not as carriers, and that the company will not be responsible for anything in regard to the property after the same shall have been so delivered to the succeeding line.

VII.

As this was not an attempt to limit a common law liability, but to provide the terms on which the goods should be received and dealt with within and consistently with the

common law liability, this special provision conclusively rebuts any implication that might be claimed to arise upon the face of the receipt without it. There being no common law duty to receive and transport to Philadelphia, the company had a right to refuse such service, and had a right to tell the consignor that it would only undertake to do the duty imposed upon it by law, and that was to receive the property and transport it to the end of its line. It accordingly did tell the consignor that, and refused to undertake anything further, and there was no claim that Myrick did not so understand it.

VIII.

This, if we are right in our first proposition, did not in any manner impinge upon the provisions of the statutes of Michigan or Illinois respecting the power of carriers to limit their common law liability; and so this provision was just as much a part of the transaction as if it had been inserted as a first paragraph on the face of the receipt.

IX.

The question, therefore, is not even what might have been the obligation of the company had it received the property marked for Philadelphia without anything else taking place, but it is whether, it not being bound to receive and become responsible for the property for transportation beyond its own road, it did in fact receive it for such a purpose. The transaction clearly shows that it did not either in fact or law; but the court below held that it did so undertake in point of law, and that there was no question for the jury on that point.

X.

The evidence that a through rate to Philadelphia was posted in the defendant's station-house is perfectly consistent with this. For the shippers would naturally wish to know what the entire expense of transportation would be, just as much in the case of each road only undertaking for its own line, as in any other. But if it were otherwise, it would be a question for the jury to find, in view of *all* the circumstances, what the actual contract was, so that in either view the decision of the court below was erroneous.

XI.

If the company had undertaken to transport to Philadelphia, it performed its whole duty. The plaintiff was bound to know the peculiar nature of his own property and the general course of business at the place of arrival, and so was any assignee of the carrier's receipt; and was bound to know, and doubtless did know, that the property must be speedily delivered on arrival, and the consignee was bound to have some person there present to receive it. But it had no such person, (on its own theory;) but the bank being the assignee of the receipt, and so giving the receipt the full effect of a bill of lading, (which it has not,) had no one present to receive the property or make any inquiry concerning it during any of the transactions, except the Blakers named in the receipt as the persons to notify of arrival. In such a case the railroad had a perfect right, with the assent of Blakers, to deposit the property with any public and responsible warehouseman or drove yard company, as the case might be, according to the constant public course of business; not as its own agent as a carrier, but as the public and general depository of that species of goods. And having done so, the railroad company was under no further obligations in respect of the property. But the court below held as matter of law that the drove yard company was the mere servant of the railroad company, and in its capacity of *carrier*. But the face of the receipt provided for the Blakers taking the place of the consignee, and implied that they might act in reference to the subject. Suppose Blakers had directed the railroad company, on the arrival of the first consignment, to deliver the cattle to the yard company, and it had done so, and the cattle had been destroyed the next night by fire and through the negligence of the yard company: would the railroad company be liable, either as carrier or warehouseman? We insist not.

Then it follows that Blakers taking the cattle from the yard company cannot make the case any better for the plaintiff.

The railroad company had performed the whole *contract* of *carriage* when it unloaded the cattle into the proper and suitable hands of the yard company, and notified the person required by the receipt. That done, the *nature* of the duty and liability, upon whomsoever it rested, was changed to that of warehouseman, (Hutchinson on Carriers, secs. 345 *et seq.*, and notes;) and the question of a non-delivery, if there was one, is one of negligence in fact, which must always be left to the jury. This the court did not do, but held that the defendants were liable *as carriers*, unless the bank knew that the cattle were to be delivered to Blakers.

XII.

Under the first request to charge, which was refused, the court should have held that this action could not be maintained in the name of Myrick; for, on the plaintiff's theory, the assignment of the carrier's receipt had vested the complete legal title to the property, and the right to control, in the bank, where it remains, as Myrick had not taken up his drafts or obtained a reassignment of the receipt. The allegation in the declaration (Rec., p. 3), that Myrick sues for

the use of the bank, did not help the matter. It is still, in a legal sense, his suit, and his alone; and this allegation is only a notice of an equity supposed to exist in favor of the bank. In legal effect it is precisely the same as if the suit had been in the name of Larned for the use of the bank.

XIII.

The questions involved in this case are those of general commercial law, and, in especial respects, the subjects of general, national jurisprudence of the country, and ought not to be made to depend upon a law of particular States. Considered under such a principle, the decisions of this court are quite contrary to the ruling of the court below.

XIV.

If it were a question of local law, the decisions of the court of the State of Illinois are not inconsistent with what is insisted upon here by the plaintiff in error. (See 54 Ill. Reports, page 88, Railroad *v.* Frankenberg; 68 Ill., 476–7, R. R. Co. *v.* Mitchell.) In this case the court quoted the very rule we insist upon, from the opinion of this court in R. R. Co. *v.* Manufacturing Co., 16 Wall., 318, and declared it to be just.

See also 81 Ill., 339, Express Co. *v.* Wilson.

The authorities believed to bear directly on the questions, are cited below.

GEO. F. EDMUNDS,
Of Counsel for Plaintiff in Error.

AUTHORITIES.

16 Wall., p. 324, Railroad Co. *v.* Manufacturing Co.

The court says, referring to cases of transportation over several lines:

"In such cases it is the duty of the carrier, in the absence of any special contract, to carry safely to the end of its line and to deliver to the next carrier in the route beyond. This rule of liability is adopted generally by the courts in this country, although in England at the present time, and in some of the States of the Union, the disposition is to treat the obligation of the carrier who first receives the goods as continuing throughout the entire route. It is unfortunate for the interests of commerce that there is any diversity of opinion on such a subject, especially in this country; *but the rule that holds the carrier only liable to the extent of his own route, and for the safe storage and delivery to the next carrier, is in itself so just and reasonable that we do not hesitate to give it our sanction.*" (1872.)

22 Wall., 129, Railroad *v.* Pratt.

In this case the court confirms the doctrine stated in the preceding case, and proceeds to say:

"The fair result of the American cases limits the carrier's liability as such, when no special contract is made, to his own line, although there are cases which hold the liability as continuing the same throughout the whole route, and such is the English doctrine."

And the court, in discussing that particular case, dwells upon the language of the carrier's receipt, as stating that it undertook to carry from Potsdam to Boston, beyond its own line. And in that case, on such testimony, the question was left to the jury as to what the first company in the whole course had affirmativly undertaken to do. (1874.)

93 U. S., 174, Bank of Ky. *v.* Adam's Express Co.

In this case, this court held that the second carrier, in whose custody the property was at the time of loss, is immediately responsible to the shipper, and, as a consequence, that the second company was not the mere servant of the first, but that the first, having delivered the property safely to it, had discharged its obligation, and a new and independent one had attached to the second company. This is totally inconsistent with the idea that the contract of the first company was for a complete and final delivery to the consignee; for in such a case there could be no privity between the shipper and the subsequent company.

95 U. S., 43, Pratt *v.* R. R. Co.

In this case the question was as to the liability of an intermediate carrier. For such a question the first carrier is as much intermediate as the second. It was the shipment from Liverpool to St. Louis under a regular and complete bill of lading, in which the first carrier—a steamship company—undertook to carry the goods to Montreal and to deliver them to the Grand Trunk R. R. Co., "and by them to be forwarded thence by railway to the station nearest to St. Louis, and to deliver," &c., (see printed record,) to the consignee. The suit was against the G. T. R. R. Co., and the court held that the liability of an intermediate common carrier is discharged by their delivery and acceptance by a succeeding carrier, and in effect that each carrier, under such a bill of lading, is only bound to perform a carrier's duty in respect of the goods over its own line, and their delivery to the next one, and that the liability of the next one attaches accordingly. (1877.)

104 U. S., 146, Ins. Co. *v.* R. R. Co.

Hutchinson on Carriers, section 244.

* * * * *

"A distinction is to be drawn between such notices as can be strictly said to limit his liability by relieving him

from strict common-law liability for losses against which carriers are understood to be insurers, and notices which warn the public that his business is confined to the carriage of only a particular class of goods, *or within the limits of his own route.*

"Such notices as these last are not to be considered so much in the light of notices to restrict his liability as in the nature of means to prevent fraud and imposition upon him." * * * * * * *

See also Ib., secs. 145–152, and notes.

1 Gray, 502, Nutting *v.* R. R. Co.

100 Mass., p. 26, Burroughs *v.* R. R. Co.

This case is a complete authority for the defense.

113 Mass., 492, Manufacturing Co. *v.* R. R. Co.

Hutchinson on Carriers, sec. 351 *et seq.*

These sections treat of a delivery and supposed negligence by the carrier after he had become a warehouseman in respect of the goods, and show with the cases referred to that it was at the very most a question for the jury whether, under the circumstances, there had been negligence in the alleged misdelivery.

See also section 366 and cases cited, showing that the bank was bound to know and bound by the usage and custom existing as to the delivery of cattle to the drove yard company.

See also section 367 *et seq.*, for the law as to delivery by railroad companies, and when they cease to be responsible as carriers; from which it appears that the rule, both in Illinois and Pennsylvania, as well as in a great number of the other States, ends the responsibility of the carrier as such when the goods are unladen from the train.

OFFICE SUPREME COURT U.S.
FILED
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JAMES H. McKENNEY, Clerk.

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17-102

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1882.

MICHIGAN CENTRAL RAILROAD COMPANY,
Plaintiff in Error,
vs.
PARIS MYRICK, FOR THE USE OF THE COMMERCIAL NATIONAL BANK OF CHICAGO,
Defendant in Error.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR DEFENDANT IN ERROR.

WALTER CRANSTON LARNED,
Attorney for Defendant in Error.

CHICAGO
PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET.
1882.

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Defendant in Error.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT OF FACTS.

Paris Myrick, the plaintiff in this case in the court below, was a buyer of cattle, sometimes on his own account and sometimes for other parties in the east. His purchases were made at the Union Stock Yards, near Chicago. Myrick was engaged in this business in the fall of 1877, and had been engaged in it for a considerable time previous thereto. In the month of November, A. D. 1877, Myrick purchased two lots of cattle, each lot consisting of 202 head. Both of these lots were purchased for a firm known as J. & W. Blaker, who were engaged in the cattle business at West Philadelphia. Myrick had been

in the habit previously of buying cattle for the Blakers. His course of business in making these purchases was as follows:

He went to the Michigan Central Railroad Company and obtained from them receipts or bills of lading, which were issued for the cattle when they received them. Myrick then took the bills of lading or receipts, so issued by the railroad company, to the Commercial National Bank of Chicago, and that bank advanced him the money wherewith to pay for the cattle so purchased. Myrick drew drafts upon J. & W. Blaker for the amount paid by him upon each purchase of cattle and deposited such drafts in the said bank. The bills of lading were given to the bank and left with it as security for the payment of the drafts, and they were attached to the drafts, and thereupon the drafts and bills of lading were sent to the correspondent of the Commercial National Bank at Newton, near West Philadelphia, for collection. The bill of lading or receipt was drawn in a form which was acceptable to the cashier of the Commercial National Bank and which was intended by the bank and known to the railroad company to be a form of receipt or bill of lading made for the express purpose of securing drafts drawn against it.

The receipt or bill of lading in the present case was similar in form to those which had been issued and deposited with the the bank upon previous shipments. It read as follows:

MICHIGAN CENTRAL RAILROAD,

CHICAGO STATION, November 7, 1877.

Received from Paris Myrick, in apparent good order,

consigned to order of Paris Myrick—notify J. & W. Blaker, Philadelphia, Pa.—202 cattle; weight 240,000.

(Signed) WILLIAM GEAGAN, *Agent.*

There were also many things printed upon this receipt or bill of lading, all of which are set out in full on pages 18 and 19 of the printed transcript of record herein. This bill of lading was endorsed upon the back by Paris Myrick and deposited with the Commercial National Bank as security for a draft of $12,287.57 upon J. & W. Blaker, a copy of which draft is set out on page 17 of the printed transcript of record. The transaction of November 14th was precisely similar in every respect to the transaction of November 7th, excepting that the draft of November 14th was for $12,448.12, and the cattle securing said draft weighed 260,000 instead of 240,000 pounds. Both of these drafts and bills of lading were similar in all respects to those which Myrick had been in the habit of using during his whole course of business with the Commercial National Bank. It will be observed that by the receipts or bills of lading the railroad company promises to deliver the cattle to the order of Paris Myrick. It has also been shown that Myrick endorsed the receipts or bills of lading, thereby ordering the delivery of the cattle to the bank as security for the drafts so drawn by him. The drafts drawn previously to November 7th and 14th had always been paid.

It was shown that the instructions of the bank to its correspondent at Newton were to hold the bills of lading as security for the drafts. Nor had the bank at any time any notice or knowledge, that cattle shipped upon any of these receipts or bills of lading, had ever been delivered to the Blakers or any other party, without the production of the bill of lading with the endorsement of Myrick thereon. The drafts of November 7th and 14th were not

paid, and after waiting some time after the usual time in which the bank was accustomed to hear of the payment of the drafts, the cashier of the bank wrote to the cashier of the bank's correspondent at Newton, asking why the drafts were not paid, and on receiving information that the Blakers had failed and could not pay the drafts, the Commercial National Bank, though its ca hier immediately telegraphed its correspondent, directing that the cattle mentioned in the bills of lading should be held and sold for the protection of the drafts. The correspondent of the Commercial National Bank had retained the bills of lading attached to the drafts, but on presenting them to the railroad company which brought the cattle to West Philadelphia, it was found that the cattle shipped November 7th, and also those shipped November 14th, had been delivered by the railroad company or its agents, directly to J. & W. Blaker, without the production of any bill of lading, and without any order or direction to such effect from Paris Myrick. Each of the two lots of cattle was immediately handed over by the railroad or its agent for that purpose, the stock yards company at North Philadelphia, to J. & W. Blaker, on the very day of its arrival, no inquiry having been made, either by the railroad company or the stock yards company for the bills of lading. The Blakers took the cattle at once, sold them and appropriated the proceeds to their own use. They then became bankrupt, and were unable to pay the drafts of Myrick, and have not paid them up to this time. This, of course, left Myrick liable to the bank on his drafts, and his only remedy was to require payment from the railroad for the cattle which they had wrongfully delivered in violation of their express contract. Such payment the railroad company refuses to make, and, therefore, suit was brought.

It appeared that the letter accompanying the draft of November 14th contained the following instructions: "De-"liver bills of lading only when drafts are paid."

Myrick swears that he told the railroad company he wanted the bills of lading for the Commercial National Bank, and he thinks the railroad company knew how he received the money to buy these cattle. (Page 20, Transcript of Record.)

The through rate for the cattle in these two lots from Chicago to Philadelphia was fifty-eight cents a hundred. The defendant railroad company had posted up in its station a notice that such was the through rate to Philadelphia, and the railroad company took these cattle upon the basis of a through rate to Philadelphia, and did not mention any connecting roads by which these cattle were to be shipped after leaving the terminus of the Michigan Central railroad at Detroit. It was admitted that the line of the Michigan Central railroad terminated at Detroit. There was no evidence to show that Myrick knew of the roads the cattle were going over after they left the Michigan Central. The entire freight on the cattle from Chicago to Philadelphia was paid by the Blakers to the North Philadelphia Drove Yard Company. (Page 21, Transcript of Record.)

It further appeared that it was never the custom of the railroad company to look to the consignee for freight, but the railroad company collected its freight from the drove yard company. The way-bills accompanying the cattle were altered by one W. W. Snell, the station agent of the North Pennsylvania road at the stock yards. He put in the way-bills simply the words, "J. & W. Blaker," leaving out the words, "to the order of Paris Myrick." No one on behalf of the railroad company directed the stock yards

company to inquire for bills of lading before delivering the property, nor to communicate with any one on the subject except the Blakers. (Page 26, Transcript of Record.)

There was also evidence tending to show that the stock yards company delivered cattle without the production of bills of lading. When they thought the cattle was for certain parties and those parties claimed it, they would deliver the cattle to those parties without the production of bills of lading, provided they knew the parties and thought they were all right. It was admitted that the business of delivering cattle at the stock yards at Philadelphia was very loosely conducted. (Page 27, Transcript of Record.)

BRIEF.

The first question which arises upon the facts stated in this record, is whether the contract, which is the foundation of the action, was a contract between the Michigan Central Railroad Company and Paris Myrick, to transfer the cattle named in it from Chicago to Philadelphia, or whether it was merely a contract to carry the cattle from Chicago to Detroit and there deliver them to a connecting road for further transportation. It appears, apparently, from the mere consideration of the contract itself, that it was a through contract.

The contract admits the receipt of goods at Chicago, consigned to a party in Philadelphia. There is, in the receipt, a blank left under the word destination, which blank could only be filled up by the word Philadelphia, as that city is named in the written part of the contract, and is the only destination or place of delivery named in the contract at all. Apart from any knowledge of the actual length of the defendant's line of railroad, no one looking at this paper could possibly place any other construction upon it than that it was an undertaking to carry the cattle from Chicago to Philadelphia.

This construction of the contract, which is deduced merely from a consideration of the terms expressed in it, is further strengthened and corroborated by the uncontradicted testimony in the case that the cattle were taken upon a through rate of freight, from Chicago to Philadelphia, of fifty-eight cents a hundred, and that the company held itself out by notices conspicuously published in its

station house as a carrier of live stock and other merchandise, from Chicago to Philadelphia.

Moreover, there appears upon the margin the following words: "This receipt can be exchanged for a *through* bill "of lading." It is impossible, either upon the face of the contract, or in view of the circumstances surrounding the shipment, to put any other construction upon the contract except that it was a through contract to transport the cattle from Chicago to Philadelphia.

Moreover, secondly, in Illinois the mere reception by a carrier of goods marked for a particular destination constitutes of itself a through contract to transport the goods from the place of reception to the point for which they are marked.

Ill. Cent. R. R. Co. v. *Frankenberg*, 54 Ill., 88.

The language of the court in the Frankenberg case (page 97) is as follows:

"So long ago as 1860, this court, in the case of this same "company against Copeland, 24 Ill., 332, expressed a de- "cided partiality for the rule in Muschamps' case (8 "Mees. & Wels., 421), so much relied on by the appellee, "and in which all the authorities in England and America "were fully examined; and we said, though this point was "not in the case, we were inclined to yield to the force of "the reasoning of the English courts, on principles of "public convenience, if no other, and to hold, that when "a carrier receives goods to carry, marked to a particular "place, he is *prima facie* bound to carry to and deliver at "that place. By accepting the goods so marked, he im- "pliedly agrees so to do, and he ought to be answerable "for the loss."

Again, in the case of the same company against Johnson, 34 Ill., 389, there was an express understanding to transport the goods to Wheeling, but the court, referring to *Railroad* v. *Copeland*, 24 Ill., 338, considered that case as holding that the carrier who receives goods to carry, marked to a particular place, was bound to carry to and deliver at that place; that it was an agreement, implied from the marking or direction on the goods and accepting them so marked, that the liability arose. Such is the law of Illinois.

See also,

Cutts v. *Brainard*, 42 Vermont, 567.

A contract of carriage made in this state must be governed by the laws of this state.

Penn. R. R. Co. v. *Fairchild*, 69 Ill., 260.

Nor is it possible that a different rule could be adopted by the Federal court in Illinois from that adopted by the State court; otherwise a defendant having a right to come into a United States court could always change the rule of law by removing his case from one court to the other. This rule of law, constantly upheld by the Illinois decisions, enters into and becomes a part of the contract of carriage in this case.

Where the contract appears upon its face to be a through contract, and the circumstances surrounding its inception indicate that the intention of the parties was to make a through contract, the United States Supreme court has declared the contract to be a through contract, though there is no decision of the United States Supreme court which places the question upon exactly the same broad footing as the Illinois court has done, that the mere

reception of the goods marked for a particular place is sufficient evidence of a through contract, without other facts or circumstances tending to show that such was the intention of the parties.

In the case of *R. R. Co.* v. *Pratt*, 22 Wallace, 123, this question is discussed. That was a case of the shipment of horses from Pottsdam, on the Ogdensburg and Lake Champlain railroad to Boston, over one or more connecting roads. The way-bill in that case (found on page 126) stated the transportation of the merchandise by the Ogdensburg and Lake Champlain Railroad Company from Pottsdam Junction to Boston. This way-bill was admitted by the court (page 132) as evidence of a through contract made by the railroad company to transport from Pottsdam to Boston.

The court says on page 132:

"Again, a specific price was agreed upon for trans-
"portation over the whole route—the jury were justified
"in inferring that where a carrier fixes the price for
"transportation over the whole route that he makes the
"entire contract his own." And the court is careful to say that it makes no difference whether through freight was paid at the beginning or end of the route. The way-bill in the Pratt case is little, if at all, stronger evidence of a through contract than the receipt in the present case. The receipt in the present case acknowledges the receipt of the cattle consigned to the order of Paris Myrick, Philadelphia, Pa., with a stipulation that a *through* bill of lading may be had for the receipt; and the testimony shows, in the case at bar, that a through rate of freight was agreed upon and paid from Chicago to Philadelphia upon both of these shipments of cattle.

It would seem therefore to be settled by the case of *Railroad Company* v. *Pratt*, that the contract in this case was a through contract; nor does it make any difference that the receipt was not exchanged for a regular through bill of lading, as it was stipulated on the margin might be done. The shipper was not bound to exchange his receipt for such a through bill of lading which might contain restrictions upon the carrier's liability when the issuance of the receipt and the acceptance of the property to be conveyed from Chicago to Philadelphia made a sufficient contract for carriage. In the absence of a bill of lading the common law liability attaches to the carrier.

Ill. Central Railroad Company v. *Smyser*,
38 Ill., 361.

Hence, it was rather incumbent upon the railroad company to secure the exchange for a bill of lading stating in exact terms their liability than for the shipper, and not having effected such an exchange the railroad company made a through contract for the transportation of these goods upon which its liability as a common carrier attaches.

It seems, then, to be established, upon the law and evidence in this case, that the contracts which are the foundation of this suit are through contracts between the Michigan Central Railroad and Paris Myrick.

reception of the goods marked for a particular place is sufficient evidence of a through contract, without other facts or circumstances tending to show that such was the intention of the parties.

In the case of *R. R. Co.* v. *Pratt*, 22 Wallace, 123, this question is discussed. That was a case of the shipment of horses from Pottsdam, on the Ogdensburg and Lake Champlain railroad to Boston, over one or more connecting roads. The way-bill in that case (found on page 126) stated the transportation of the merchandise by the Ogdensburg and Lake Champlain Railroad Company from Pottsdam Junction to Boston. This way-bill was admitted by the court (page 132) as evidence of a through contract made by the railroad company to transport from Pottsdam to Boston.

The court says on page 132:

"Again, a specific price was agreed upon for trans-
"portation over the whole route—the jury were justified
"in inferring that where a carrier fixes the price for
"transportation over the whole route that he makes the
"entire contract his own." And the court is careful to say that it makes no difference whether through freight was paid at the beginning or end of the route. The way-bill in the Pratt case is little, if at all, stronger evidence of a through contract than the receipt in the present case. The receipt in the present case acknowledges the receipt of the cattle consigned to the order of Paris Myrick, Philadelphia, Pa., with a stipulation that a *through* bill of lading may be had for the receipt; and the testimony shows, in the case at bar, that a through rate of freight was agreed upon and paid from Chicago to Philadelphia upon both of these shipments of cattle.

It would seem therefore to be settled by the case of *Railroad Company* v. *Pratt*, that the contract in this case was a through contract; nor does it make any difference that the receipt was not exchanged for a regular through bill of lading, as it was stipulated on the margin might be done. The shipper was not bound to exchange his receipt for such a through bill of lading which might contain restrictions upon the carrier's liability when the issuance of the receipt and the acceptance of the property to be conveyed from Chicago to Philadelphia made a sufficient contract for carriage. In the absence of a bill of lading the common law liability attaches to the carrier.

Ill. Central Railroad Company v. *Smyser*, 38 Ill., 361.

Hence, it was rather incumbent upon the railroad company to secure the exchange for a bill of lading stating in exact terms their liability than for the shipper, and not having effected such an exchange the railroad company made a through contract for the transportation of these goods upon which its liability as a common carrier attaches.

It seems, then, to be established, upon the law and evidence in this case, that the contracts which are the foundation of this suit are through contracts between the Michigan Central Railroad and Paris Myrick.

II.

If these contracts are through contracts the Michigan Central Railroad Company is liable upon them no matter which one of the connecting carriers committed the fault.

It is said in *Railroad Company v. McCarthy*, 96 U. S., 266, upon a similar to this in the present case, as follows:

"The contract with the defendant was for the transportation of the cattle the entire distance they were to go. No other company was named. There was no mention of compensation to any other party, and nothing was said of change to the cars of any other company on the way. Such corporations, unless forbidden by their charters, have the power to contract for shipments the entire distance over any connecting lines. The principle is so well settled in this country, that a further citation of authorities in support of it is unnecessary. Such is also the rule of the English law. Both here and there the company is liable in all respects upon the other lines as upon its own. In such cases the public has a right to assume that the contracting company has made all the arrangements necessary to the fulfillment of the obligations it has assumed."

See also:

Railroad Co. v. *Pratt*, 22 Wallace, 124.

Railroad Co. v. *Andriscoggin*, 22 Wallace, 601.

Woodward v. *Ill. Cent. R. R. Co.*, 1 Bissel, 450.

Adams Express Co. v. *Wilson*, 81 Ill., 339.

Toledo, P. & W. R. R. Co. v. *Merriman*, 52 Ill., 123.

III.

It may be urged that the printed rules, relating to transportation, upon the back of the receipts, in the present case, place a limit upon the carrier's responsibility. (These rules are found upon pages 18 and 19 of the printed transcript of record.) It is a sufficient answer to this proposition that endorsements upon the back of such a paper as this are no part of the contract. Nor would printed provisions in a bill of lading be a part of the contract, unless there was special proof that the shipper had consented to them.

In *Railroad Co.* v. *Manufacturing* Co., 16 Wallace, 329, it is said:

"These considerations against the relaxation of the "common law responsibility by public advertisements "apply with equal force to notices having the same object, "attached to receipts given by carriers on taking the "property of those who employ them into their posses- "sion for transportation. Both are attempts to obtain, by "indirection, exemptions from burdens imposed in the in- "terests of trade upon this particular business. It is not "only against the policy of the law, but a serious injury "to commerce, to allow the carrier to say that the ship- "per of merchandise assents to the terms proposed in a "notice, whether it be general to the public or special to "a particular person, merely because he does not expressly "dissent from them. If the parties were on an equality "in their dealings with each other, there might be some "show of reason for assuming acquiescence from silence, "but in the nature of the case this equality does not exist, "and, therefore, every intendment should be made in favor

"of the shipper when he takes a receipt for his property, "with restrictive conditions annexed, and says nothing, "that he intends to rely upon the law for the security of "his rights."

See also:

Western Transportation Co. v. *Newhall*, 24 Ill., 466.

Ill. Cent. R. R. Co. v. *Smyser*, 38 Ill., 356.

Indeed, apart from judicial proceedings, the statutory law of Michigan, to which state the defendant corporation belongs, expressly prohibits a railroad company to limit or change its common law liability by any contract, or in any other manner, except by a written contract, no part of which shall be printed, which shall be signed by the owner or shipper of the goods to be carried.

Statute of Michigan, 1855, page 304.

Statute of Michigan, compilation of 1871, page 783, Sec. 2386.

It is also provided in the statute law of Illinois (Revised Statutes of 1877, page 269, chapter 27), that no carrier shall be allowed to limit his common law liability safely to deliver property at the place to which the same is to be transported by any stipulation or limitation expressed in the receipt given for such property. It is clear, therefore, as well by the decisions referred to as by the statute law just quoted, that the endorsements upon the back of this receipt are no part of the contract, at least without special proof that the shipper assented to them. Such proof it is for the defendant setting up such limitation of liability to produce.

Anchor Line v. *Dater*, 68 Ill., 370.

Adams Express Co. v. *Haines*, 42 Ill., 89.

No such proof has been made in this case, and no assent on the part of the shipper to the restrictions of liability printed on the back of the receipt is even attempted to be shown.

The conclusion of this branch of the argument, therefore, is that the Michigan Central Railroad Company stands before the court liable upon a through contract from the transportation of cattle from Chicago to Philadelphia, without any restriction upon such liability except such as the common law imposes.

The next question which arises is, what is the liability or obligation assumed by the Michigan Central railroad in this case? On a bill of lading made to order, the undertaking is to deliver to the order of the party to whose order the goods are consigned. A delivery to any other party is a misdelivery for which the carrier is liable.

The case of the Thames, 14 Wallace, 98, is very similar in many of its facts to the case at bar, and shows clearly the view of this court as to the liability of a carrier on a bill of lading to order. In that case certain parties had purchased cotton at Savannah to be shipped to New York, the party purchasing the cotton in Savannah being a partner of the parties in New York for whom the cotton was bought. The cotton was shipped upon the steamship Thames, and bills of lading were issued for it endorsed "deliver B. Seaman, cashier, or order."

These bills of lading were deposited with the bank in Savannah, as security for drafts on New York upon which the money was raised wherewith to pay for the cotton. On the arrival of the steamship in New York the cotton was immediately delivered to the parties for whom it was really purchased, but without the order of

the cashier of the bank. The cotton arrived in New York on a Sunday, and was delivered the next morning without any order from Seaman, the endorsee of the bills. No demand was made upon the ship for the cotton by Seaman or the bank for nearly twenty days. Upon these facts the court held the ship liable for the value of the cotton, and upheld substantially the doctrine that the bill of lading endorsed transfers the property to the endorsee, and delivery cannot rightfully be made under any circumstances to any other party.

See also:

Wright v. *Northern Cent. R. R. Co.*, 8 Phil., 19.

Edwards on Bailments, sec. 590, page 450.

I. & St. L. R. R. Co. v. *Herndon*, 81 Ill., 146.

Indeed, so strictly is the contract made by the endorsement of the bill of lading construed, that it is held that after such endorsement even the consignee cannot countermand delivery until advances made upon them are paid.

Abbott on Shipping, 12th edition, page 263; also page 271.

See also *Haille* v. *Smith*, 1 Bos. & Pul., 513.

See also the case of the Matilda Lewis, 5 Blatchford, 520.

If no bill of lading be presented there is constructive notice from the fact of such non-presentation that the goods are not paid for. Such is held to be the case upon a receipt, where no bill of lading has been issued, because the carrier is bound to presume that a bill of lading may

be issued, and if none such is presented he will be held affected with notice that the goods are not paid for, and that there is outstanding a bill of lading or receipt to secure payment for the goods.

Craven v. *Ryder*, 6 Taunton, 433.

The principle of law which applies to the endorsement of bills of lading is, that such endorsement, if made as security for advances, passed the title to the goods to the endorsee until such advances are paid. The carrier is affected with notice that such is the legal effect of an endorsement upon a bill of lading, and it is his bounden duty, whether as carrier or warehouseman, to deliver the goods only to the party who holds the bill of lading. If no such party appears then it is his duty to inquire for the bill of lading. If no party holding the bill of lading, or claiming the goods under that title can be found, then the carrier or warehouseman must detain the goods until some party does claim them under the title of the bill of lading, unless no such party appears within a reasonable time. The mere fact that no one appears at the time of the arrival of the goods and presents a bill of lading for them, is no excuse to the carrier for delivering to any other person. He has made a contract, and in fulfilling his contract he runs no risk. The goods are liable for any expenses or detention in case they are not called for in proper season, and all the carrier or warehouseman is to do is to hold them until some one does claim them under the title of the bill of lading, by which title he has contracted to deliver them. If no one appears to claim them within such reasonable time as the law requires him to hold the goods, the law makes provision for the sale of the goods themselves to re-imburse the carrier for the expenses of freight and storage, and the goods will be

sold to satisfy such charges. There is no excuse for the carrier's violating his express contract, nor is there any risk of loss to him in fulfilling it exactly as he agreed.

City Bank v. *Railroad Co.*, 44 N. Y., 141.
Howard v. *Shepard*, 9 M. G. & Scott, 296.
Tyndal v. *Taylor*, 4 El. & Bl., 219.
Edwards on Bailments, Sec. 59, p. 450.
Armour v. *M. C. R. R. Co.*, pp. 120, 121.
Angell on Carriers, Sec. 298.
Gibson v. *Stevens*, 8 Howard, 400, Curtis' Edition, 635.
R. R. Co. v. *Herndon*, 81 Ill., 146.
Ill. Cent. R. R. Co. v. *Christy*, 64 Ill., 135.
McDowes v. *Green*, 24 N. Y., 643, *et seq.*

These principles of the law regarding bills of lading have been very recently considered by this court in the case of *Shaw* v. *Railroad Company*, 101 United States, p. 557; in that case it is most emphatically held that the bill of lading represents the goods. It is said, on page 565, "bills of lading are regarded as so much cot-" ton, grain, iron or other articles of merchandise." It must, therefore, be regarded as a settled principle of law, that the bill of lading endorsed transfers the title to the endorsee for all the purposes of such endorsement.

Nor can defendant in this case claim any exception to the general rule of law upon the ground that the goods transported in the case at bar were not ordinary merchandise, but live stock. There is no different principle applicable to the liability of a carrier in the transportation of live stock from the principles which apply in the transportation of any other merchandise, excepting that the carrier, in the case of the transportation of live stock, is not

liable for such accidents as result wholly from the nature and propensities of the animals themselves; as for example, if stock refuse to eat and therefore die upon the road, the carrier is not liable, or if they break loose from their fastenings and trample upon or kill each other, he cannot be liable; or if they die of fright on account of their unusual situation; but all such rules as apply to the delivery of ordinary merchandise apply also to the delivery of live stock.

This question as to the transportation of live stock is very fully discussed in the case of *Kansas Pacific R. R. Co.* v. *Reynolds*, 8 Kansas, 623, page 637 *et seq.*

The court in this case lays down the true distinction between the liability of carriers of live stock and the ordinary liability of common carriers of merchandise, and such difference of liability is strictly limited to questions arising from the nature of the live stock itself.

See also *St. L. & C. R. R. Co.* v. *Dorman*, 72 Ill., 504.

This principle is also recognized by the case of *Railroad Co.* v. *Pratt*, 22 Wallace, above referred to. For this was a case for the transportation of horses, and yet no defense against the carrier's liability is even attempted upon the ground of the nature of the merchandise.

It is urged by the plaintiff in error that cattle are different from other kinds of freight for the reason that, being alive, they must eat and drink and must receive due care and attention, and therefore it is nccessary to unload them very soon after their arrival at their destination, and for the purpose of receiving them upon such arrival it is urged by the plaintiff in error that stock yards have been made and such preparations as are necessary for the

immediate care of cattle upon their being unshipped from the cars. All this is very true, but it is no foundation for the argument of the plaintiff in error that therefore a delivery to the stock yards at the end of the carrier's route is sufficient delivery when the carrier has contracted to deliver to a certain party or his order. If the carrier makes such a contract he makes it in view of the fact that the stock yard does exist and is an agency which can be used by the carrier for the proper fulfillment of his contract.

In *Railroad Company* v. *McCarthy*, 96 U. S., 266, the court says: "The public has a right to assume that the "contracting company has made all the arrangements "necessary to the fulfillment of the obligation it has as- "sumed."

The fact that cattle must be put into stock yards or other similar agencies for their care does not excuse the railroad company for handing over cattle belonging to one party to another party who has no claim upon them. The stock yards must be regarded as one of the agencies by which, in this case, the Michigan Central Railroad Company intends to carry out its contract with Paris Myrick just as much as any one of the connecting carriers which unite to form a through line from Chicago to Philadelphia over which the plantiff in error has agreed to transport these cattle.

The argument thus far leads irresistibly to the conclusion that the Michigan Central Railroad Company made a through contract to carry these goods from Chicago to Philadelphia.

That this contract has been violated, and that no exception from the usual common law liability of common carriers is shown in this case, either upon the papers

themselves, or by any special agreement by the road with the shipper, by reason of any peculiarity inherent in the nature of the merchandise transported. Nor has any other exception been proved in this case, which can shield the carrier against his common law liability, to respond in damages, for his palpable violation of the two contracts proven in this case.

V.

It was attempted in the court below to set up a usage or custom that the cattle should be delivered in the way in which they were delivered in the present case. Such a usage, even if proven, is of no avail to vary or contradict the terms of a written contract. Proof of usage is only admissible where no written stipulations have been entered into, or where the meaning of the parties cannot be accurately ascertained from the language used in their written contract. This question is discussed in *Oelricks* v. *Ford*, 23 Howard, 63, where the court thus speaks of allowing the admission of proof of usage:

"This proof is admissible in the absence of express "stipulations, or where the meaning of the parties is un- "certain upon the language used, and where the usage "of the trade to which the contract relates, or with ref- "erence to which it was made, may offer explanation or "supply deficiencies in the instrument. Technical, local "or doubtful words may be thus explained. So, where "stipulations in the contract refer to matters outside of the "instrument, parol proof of extraneous facts may be "necessary to interpret their meaning. As a general rule, "there must be ambiguity or uncertainty upon the face "of the written instrument, arising out of the terms used

"by the parties, in order to justify the extraneous evi-
"dence; and, when admissible, it must be limited to its
"effect to the clearing up of the obscurity. It is not ad-
"missible to add to or engraft upon the contract new
"stipulations, or to contradict those which are plain."

See also:

Insurance Co. v. *Wright*, 1 Wallace, 470.
Dixon v. *Dunham*, 14 Ill., 326.

The usage which is held to enter into the contract between the parties must be ancient, certain, uniform, reasonable, and so general as to furnish presumption of knowledge of both parties. Such a usage cannot be inconsistent with the terms of agreement between the parties, or contrary to the established principles of law or public policy.

Wilson v. *Bowman*, 80 Ill., 495.

It is obvious that no proof of usage can be admitted in this case under the decisions quoted, because any usage which contemplated the delivery of these cattle to any other parties than those mentioned in the receipt or bill of lading, directly contradicts the terms of that written instument. Nor would such a usage be either ancient, certain or reasonable; for clearly it would be most unreasonable that where a bank takes cattle as security for the advancement of large sums of money, it would consent to the delivery of its security to other parties before the advances were paid. To imply such an understanding on the part of the bank would be absurd in the extreme. Nor do any of the facts in this case, even supposing such proof to be admissible, tend to show that the bank had any knowledge of such mis-delivery of the cattle upon this or any previons shipment on these contracts. The proof is

express that the bank directed the bills of lading, which stood in place of the cattle, to be held until the drafts were paid. And in the first case which arose of the drafts not being paid, the bank immediately directs its correspondent to secure the cattle and have them sold to satisfy the drafts. If proof of any such usage, supposing there were such usage, is to be admitted, knowledge of the usage must be brought home to the bank, as the bank held the bills of lading, and the law charges the railroad company with knowledge of the bank's title and rights.

It is necessary that the bank should be affected with notice of any such usage or custom, if any such existed between Myrick and the railroad company. This suit is not a suit between Myrick and the railroad company, but between the bank and the railroad company. Myrick is a nominal plaintiff merely, and the bank is the real party, as it is the party beneficially interested. Courts regard actions brought in this way by a nominal plaintiff to the use of the real party in interest as being actually suits between the party beneficially interested, and the defendant, exactly as though the name of the nominal plaintiff were not inserted. The reason of this rule is that the name of the nominal plaintiff is only inserted to satisfy a technical rule of law. Hence, no equities existing between Myrick and the railroad would affect the bank in this form of action which would not have affected it if the suit were brought directly in its own name. There is no proof in the case that the bank had notice of any such usage or custom, nor is there the slightest proof that Myrick himself knew of any such custom either.

Corser v. *Craig*, 1 Wash., C. C., 424.
Welch v. *Mandeville*, 1 Wheat., 233.
Mandeville v. *Welch*, 5 Wheat., 277.
Ransom v. *Jones*, 1 Scam., 291.

Littlefield v. *Story*, 3 Johns., 425.
Anderson v. *Van Allen*, 12 Johns., 342.
Jones v. *Witter*, 13 Mass., 304.
Dazey v. *Mills*, 5 Gilman, 67.

It is therefore clear that neither by establishment of usage nor in any other way has the carrier, the Michigan Central Railroad Company, succeeded in establishing any reason why it should not be subjected to its common law liability.

And, indeed, looking at the question before us apart from its strictly legal aspect, and considering it in the light in which business men would be apt to regard it, what reason can there be why the Michigan Central Railroad Company should not be liable for the loss of these cattle? It has made a contract clear and plain upon its face which no business man or person of average common sense could fail to understand, a contract to take certain cattle from Chicago to Philadelphia for fifty-eight cents a hundred pounds, and deliver them at Philadelphia to the order of one Paris Myrick; that Paris Myrick has ordered that these cattle shall be delivered to the Commercial National Bank as security for drafts by the proceeds of which said Myrick has paid for the cattle, as was known to the railroad company. The railroad company, through one or more of the agents it has employed to carry out its contract, has delivered these cattle to parties to whom the cattle did not belong. These parties have sold the cattle, appropriated the proceeds to their own use and have become bankrupt. Is there any reason in law or justice why the railroad company should not make good the loss occasioned solely by its fault?

WALTER CRANSTON LARNED,
Attorney for Appellee.

17-102

OFFICE SUPREME COURT U.S.
FILED
DEC 7 1882
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

October Term, 1882. No. 123.

THE MICHIGAN CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

PARIS MYRICK FOR THE USE OF THE COMMERCIAL NATIONAL BANK OF CHICAGO.

REPLY BRIEF FOR DEFENDANT IN ERROR.

It is contended by the defendant in this case that apart from any questions of general usage or custom which might be held to enter into the contract between the parties in certain cases, there is in this case evidence of a particular usage or custom between the nominal plaintiff, Myrick, and the railroad company, with notice of which usage or custom the Commercial Bank is chargeable.

Our answer to this position is twofold. In the first place, we claim that the bank in this action is not chargeable with notice of equities existing between Myrick and the railroad company, if any such there were; and secondly, that the facts as disclosed upon this record do not show any such custom or usage between Myrick and the railroad company. This action is brought by Paris Myrick for the use of the Commercial Bank. Where a contract is not so assignable under the law as to enable a party to sue upon

it in his own name, it is a well-recognized principle of the law that the party having the beneficial interest in the contract, by assignment or otherwise, has a right to use the name of the party technically entitled under the law to sue upon the contract for the purpose of enforcing the beneficial interest. It will be observed, then, at the outset of this discussion, that in such an action the real parties in interest are two—the defendant and the person holding the beneficial interest for whose use the suit is brought. The use of the plaintiff's name is merely to satisfy a technical rule of law. The plaintiff is wholly nominal, and the real question is between the party beneficially interested and the defendant.

Now, in the present case it is sought by the defendant to bring in equities which only by relation affect the real plaintiff. It does not need much argument, therefore, to show that such equities, if brought in at all, are only brought in by the extremist application of a merely technical rule, and do not affect the substantial rights existing between the real parties to the suit. Supposing the bank had sued in its own name in trover for the conversion of this property, there could be no question that in such a suit no such equities as are here attempted to be set up could be introduced at all by the defendant; and yet the same exact question is presented upon the present record as would be presented in case the suit were brought in trover for the conversion of the property itself. Courts will always, so far as may be, protect substantial interests, and seek to prevent the defeat of justice by mere technicalities.

In the case of Corser *v.* Craig, 1 Washington Ct. Ct. R., p. 424, the court says, on page 427: "It is now a long time since those objections which once existed to the assignment of choses in action have ceased to be more than formal. Courts of law, imitating the example of courts of equity, take notice of such assignments, and will to every substantial purpose give them effect, although they have not yet

ventured to sustain an action brought in the name of the assignee. But the beneficial interest vested in the assignee is so far regarded that the defendant is allowed to set off a debt due from the assignee in the same manner as if the action had been brought in his name."

In that case a bill of exchange was drawn by one Chanceaulm in favor of Corser, on Craig, and assigned by Corser to Pettit and Bayard. The bill was not accepted by Craig. Pettit and Bayard sued Craig in the name of Corser. An attachment was set up against Corser, on which judgment was obtained against Craig as garnishee. Though Corser was the nominal plaintiff, the court refused to allow the defendant to set up as a defense to the suit in Corser's name, but in which Pettit and Bayard were the beneficial plaintiffs, the judgment in garnishment against Craig and in favor of Corser's creditors. The cases of Welch *v.* Mandeville, 1 Wheat., 233, and Mandeville *v.* Welch, 5 Wheat., 277, held that where an assignee brings suit in the name of his assignor, the assignor cannot dismiss the suit collusively, or have such control over it in any way as to defeat the assignee's right of action in the name of the assignor.

The case of Ransom *v.* Jones, 1 Scam., 291, holds as follows:

"Where there has been a transfer of a bond or instrument without a regular assignment to authorize the assignee to institute a suit in his own name, courts will always permit the use of the name of the person to whom it is made payable, without an express order so to do. The party having the legal right to the debt should have the necessary power to use the forms necessary to recover the debt. Indeed courts are bound to protect the interest of the holder and prevent even a release of the debt after such transfer, or a discharge of the action by the person in whose name it has been commenced."

In Littlefield *v.* Story, 3 Johns., 425, which was a suit brought by Littlefield for the use of Shepherd, the court

recognizes the rights and equities of the assignee of the chose in action, and says that not even a release of the bond by the assignor after the assignment and notice could be set up to defeat the action of the equitable owner in the name of the assignor.

The case of Anderson *v.* Van Allen, 12 Johns., 342, is in point. This was a case of a note due from Van Allen to Anderson. Anderson made an assignment; the assignee sought to collect the note. Van Allen pleaded a set-off, but such set-off accrued after the assignment, and when Van Allen ought to have known the assignment would be made. The court says: "The plaintiffs having made an assignment of the demand on which the present suit is founded, for the benefit of their creditors, they are only nominal parties upon the record, and the real question is between their creditors and the defendant, and the right of set-off will depend upon the fact of how far the defendant is chargeable with notice of the assignment; nor is actual notice necessary, but only such facts as will put the party upon inquiry."

To the same effect are the cases of Jones *v.* Witter, 13 Mass., 304, and Dazey *v.* Mills, 5 Gillm., 67.

An examination of these cases will show that the doctrine of the courts is to consider actions brought in this way as being really suits between the party beneficially interested and the defendant, and the case is not regarded as being a suit between the nominal plaintiff and the defendant. Otherwise such plaintiff would, of course, have the right to dismiss his suit, which it is held cannot be done to the prejudice of the assignee; and of course no defense between the defendant and some party foreign to the record could be allowed to be set up in a strictly legal action between the plaintiff and the defendant, they being the only parties to the record. The doctrine of the cases, then, is that a suit brought as this one is, is not treated according to the rules of law regulating the ordinary actions

between plaintiff and defendant, nor does the party beneficially interested stand in every respect in the shoes of the nominal plaintiff. If he did so, the debts or credits of the nominal plaintiff could be introduced, which was not allowed in Corser *v.* Craig. On the contrary, the suit is actually between the real parties in interest, and the courts so treat it in all the cases referred to; and in the present case the deduction from the authorities must be, that the court will not regard the merely technical form of the action, but will treat the whole question upon this record exactly as if the plaintiff had brought suit in its own name instead of using the name of the nominal plaintiff, who was the assignor of the bill of lading or contract sued upon.

The first question, then, seems to be settled that the use of the name of Paris Myrick as nominal plaintiff upon this record will not be allowed to make any substantial difference in the rights of the parties.

There remains this further question, whether, as assignee, the bank in this case takes any different or better title to the property represented by the bill of lading, from that which was held by Myrick himself, the party to whom it was issued. The ordinary doctrine of assignments unquestionably is, that an assignee of a chose in action takes no better title than his assignor had. Such is the doctrine which underlies the whole principle of the equitable assignment of mortgages—that the assignment of the note carries with it the mortgage as a security; and that in such case the assignee of the note takes the mortgage subject to all defenses existing between the original parties thereto. But a bill of lading stands upon a different footing, and can easily be distinguished from a mortgage or other chose in action. A bill of lading is a muniment of title, and is held by the law to actually pass the property represented by it to the person to whom it is delivered. So absolute is the title passed by the bill of lading, that the assignee may

maintain an action of trover for the property itself. The assignee of a note secured by a mortgage can get no higher or better security for the note through the mortgage than the assignor himself had, and must foreclose his mortgage as it is, subject to the equities between the parties inherent in it as a security. The security for the note does not change because the note itself has passed into the hands of a third party. But in the case of the pledging of a bill of lading to secure a note, it is not a lien upon the property that constitutes the security, but the very property itself which is transferred with the bill of lading. Hence the holder of the bill of lading can have nothing to do with any questions or equities arising between the party that issued the bill and the party that first took it. The holder has a right under the law to the property itself, to which the bill gives him the absolute legal title. The party issuing the bill of lading is affected with notice under the law, that by issuing such a bill he clothes the party to whom it is issued with apparent absolute ownership of the property represented by it, and with the power to transfer such absolute ownership without restriction to any third party; and if there be any latent equities between the original parties, such equities do not and can not affect or go with the property itself when transferred to a third party by assignment of the bill of lading. Supposing, then, that, in this case, the Commercial Bank had sued directly in trover for the conversion of this property, there could be no question of its right to maintain such a suit entirely irrespective of any equities that might exist between Myrick and the Michigan Central Railroad Company. The bank has chosen to sue upon the contract evidenced by the bill of lading, and has the legal right to use the name of Myrick for that purpose; and by suing in this way the bank is only seeking that which it has an undoubted legal right to, that is, the property itself, or the value thereof, to which it is clearly enti-

tled under the bill of lading issued by the defendant in this case.

Secondly. Even supposing that the bank is to be held chargeable with notice of equities affecting the nominal plaintiff, Myrick, the facts in this case do not show that Myrick himself had any notice or knowledge that the railroad company was in the habit of delivering the cattle which he had been shipping for several months without the production of a bill of lading. The testimony shows, on page 20 of transcript, that Myrick had been dealing with the Commercial Bank for three or four months prior to these transactions, and always in the same manner, and that the bank indicated to Myrick the form of receipt they wished him to obtain from the railroad company. Myrick testified that he thought the railroad company knew how he raised the money to buy these cattle; that he told the company that he wanted bills of lading for the Commercial National Bank. On page 22 it is stated: "Myrick generally shipped the cattle Wednesdays to arrive Sunday morning." On page 27 it is stated that "all these drafts, with the bills of lading attached, were sent forward on the same day they were put in the Commercial Bank." On page 20 it is stated that Myrick raised the money to pay for his cattle by depositing the bills of lading in the Commercial Bank, who thereupon cashed his drafts upon the Blakers. Myrick was in Chicago purchasing these cattle at the Union Stock Yards. To affect Myrick and the bank with notice of the custom of the railroad company to deliver these cattle without the bill of lading, there is offered the testimony of Thomas Schriver, on page 26, and of Alfred M. Fuller, on page 27, who stated that the North Philadelphia Drove Yards Company had been in the habit of delivering cattle without the production of the bill of lading, and that the Jersey City Stock Yards had done the like; but Schriver also says, on page 27, that the business of delivering the cattle at the stock yards is very loosely

conducted: "Our custom in regard to the delivery of cattle is known to those dealing at our yards, and generally acquiesced in." On page 24 there is testimony that the railroad company was in the habit of delivering the cattle upon a siding for the stock yards company. On page 30 there is testimony that notice of the arrival of the drafts was usually sent to the Blakers within a few hours after their receipt, and always on the same day, and that the drafts were usually paid in a short time after notice, sometimes that day and sometimes the next. The instructions to the bank were to deliver the bills of lading only when the drafts were paid; and as the drafts had always been promptly paid, the cashier of the correspondent of the Commercial Bank had no occasion to notify the railroad company, or the stock yards company, that he held the bills of lading. The bills of lading were all indorsed, and the correspondent delivered them to the Blakers when they paid the drafts, but in no case until the drafts were paid. This is all the testimony upon these points. What is the only logical inference which can be drawn from it? Myrick buys his cattle here so as to ship them on Wednesday, and they belong to him until paid for. On the same day he puts his draft and bill of lading in the Commercial Bank. So far is it from the truth that upon such a state of facts as is shown here he is chargeable with notice that the cattle were to be delivered before the bill of lading was produced, that the exact contrary must appear from these facts; because it is to be presumed that the mail containing the draft and bill of lading would certainly arrive at Philadelphia long before the consignment of cattle represented by the bill of lading. Every presumption, therefore, is that Myrick supposed the bill of lading and draft to arrive, the draft to be paid, and the bill of lading turned over to the Blakers, in order to enable them to receive the cattle, long before the cattle arrived. Moreover, the testimony is explicit that the drafts were presented upon the same day they arrived,

and paid always upon that day or the next, and that in no case previous to this one had there been any delay in payment. It is, indeed, shown that the proceeds of these drafts had always taken several days to reach the Commercial Bank, but when the Blakers paid the drafts the proceeds were remitted to New York for account of the Commercial Bank. All this, of course, took time. There is no evidence that Myrick even knew anything about the pretended course of business or of time when the proceeds of the drafts were received by the Commercial Bank. Now, can it be urged, upon these facts, that Myrick is chargeable with any notice whatever, that any single lot of cattle had ever been delivered without the production of the bill of lading? It cannot be claimed that the bank had such notice, and to imply such a notice to Myrick is to imply to him a fraudulent course of dealing with the Commercial Bank; for surely he ought not to be charged with attempting to raise the money at that bank upon a security which he knew to be good for nothing, unless there were something very much stronger in the record than can possibly be deduced from it upon which to found such a charge. On the contrary, the whole course of dealing between the parties shows that the transactions between Myrick and the bank were bona fide and upon the security of the bill of lading, and that there never was any actual or constructive notice of any delivery of any lot of cattle contrary to the terms of the bill of lading, or substitute therefor, as an explicit contract between the parties.

Both upon the law and upon the facts, then, such claim of the defendant to interpose a defense of notice to Myrick of a different custom of delivery from that called for by the contract, must utterly fail. Moreover, what could be gained by reversing the judgment in this case upon such a point? If, because of the mere technical method of bringing the action, the court lets in a defense which does not exist between the real parties, and reverses the case upon

such a ground, the simple effect under the rules of practice in the Circuit Court for the Northern District of Illinois, is that the declaration may be amended, the form of action changed, the bank substituted as plaintiff, and then, after another trial and great expense and delay for all parties, the same questions would again be submitted to this court for decision as are now before it upon the present record.

The instruction given by the court below upon this point is as follows:

"It is contended by the defendant that by the course of business growing out of a series of shipments by the plaintiff, over the defendant's line, to the same destination, a usage had grown up to deliver the cattle to the Blakers upon substantially such contracts as this; and, upon this point, I say to you the parties to a contract may by a usage change the mode of delivery, yet in order to warrant a delivery contrary to the terms of the contract it must appear satisfactorily from the evidence that the plaintiff knew that the terms had been changed at the terminus; and if in this case you believe from the evidence that the plaintiff assigned his bill of lading or receipt to the Commercial Bank, as security for the loan or advance of money, then no mere usage between the plaintiff and the defendant in that regard, contrary to the terms of the contract, would affect the rights of the bank as the holder of this bill of lading. That is to say, the bank had the right to have the contract executed according to its terms, unless the proof shows to your satisfaction that the bank had become cognizant of a usage by which the terms were changed, and acquiesced therein."

Such an instruction seems to us reasonable, and is certainly in accordance with the decisions above referred to; and the facts also show, that, even if the instruction were erroneous, it did no harm, because there is nothing in the record to show that Myrick, any more than the bank, had any knowledge of any such custom as is attempted to be set up. The instructions asked by the defendant upon this

point, to be found upon pages 42 and 43, are all unfortunate, because there is nothing in the record to sustain them; no testimony upon which they can properly be based; and the refusal of an instruction which may be good as a mere abstract proposition of law cannot be insisted upon as error in a particular case where the facts do not furnish the basis for it.

WALTER CRANSTON LARNED,
Attorney for Defendant in Error.